S. HRG. 98–227

CONSUMER CREDIT PROTECTION ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON CONSUMER AFFAIRS

OF THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

S. 1152

TO AMEND THE CONSUMER CREDIT PROTECTION ACT WITH RESPECT TO CONSUMER LEASES AND RENTAL-PURCHASE AGREEMENTS

JULY 19, 1983

Printed for the use of the Committee on Banking, Housing, and Urban Affairs

U.S. GOVERNMENT PRINTING OFFICE
23-925 O WASHINGTON : 1983

5241-36

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

JAKE GARN, Utah, *Chairman*

JOHN TOWER, Texas
JOHN HEINZ, Pennsylvania
WILLIAM L. ARMSTRONG, Colorado
ALFONSE M. D'AMATO, New York
SLADE GORTON, Washington
PAULA HAWKINS, Florida
MACK MATTINGLY, Georgia
CHIC HECHT, Nevada
PAUL TRIBLE, Virginia

WILLIAM PROXMIRE, Wisconsin
ALAN CRANSTON, California
DONALD W. RIEGLE, Jr., Michigan
PAUL S. SARBANES, Maryland
CHRISTOPHER J. DODD, Connecticut
ALAN J. DIXON, Illinois
JIM SASSER, Tennessee
FRANK R. LAUTENBERG, New Jersey

M. Danny Wall, *Staff Director*
Kenneth A. McLean, *Minority Staff Director*
Beth L. Climo, *Senior Counsel*

Subcommittee on Consumer Affairs

PAULA HAWKINS, Florida, *Chairman*

ALFONSE M. D'AMATO, New York
SLADE GORTON, Washington

CHRISTOPHER J. DODD, Connecticut
ALAN J. DIXON, Illinois

Pat Abshire, *Legislative Assistant*

CONTENTS

TUESDAY, JULY 19, 1983

Page

Opening statement of Senator Hawkins 1
S. 1152 3

WITNESSES

- Nancy H. Teeters, member, Board of Governors, Federal Reserve System 28
  - Prepared statement 29
  - Abuses in rental-purchase 35
  - No substantive regulation contained in S. 1152 37
  - Narrow preemption of State law 37
  - Response to questions of Senator Hawkins 39
  - Response to questions of Senator Dodd 47
- Geraldine, Azzata, attorney, National Consumer Law Center, Boston, Mass 51
  - Prepared statement 52
    - Introduction 52
    - I. Case histories of low-income appliance renters 56
    - II. Statutory section analysis of S. 1152 66
    - III. Recommendations and conclusion 72
    - Appendix 75
- Paulette Lee, Miami, Fla 86
  - Pre-filed testimony 87
  - Payments totaling $2,109 to own a $637.95 TV set 88
- Jane Simmons, staff attorney, Legal Services of Greater Miami, Inc., Miami, Fla 89
  - Rental-purchase agreement problems 89
  - Requiring disclosures would help lower prices 90
  - Pre-filed testimony of Jane Simmons 92
  - Exhibits of ads, radio announcement, and contracts 96
- Panel discussion:
  - Essential for consumer be allowed to collect debt 107
  - Consumer will be able to judge between good and bad bargain 108
  - Legislation to make appliance rentals as credit sales 110
  - Lease-to-buy contracts finding loopholes 111
- J. Samuel Choate, Jr., attorney, representing Association of Progressive Rental Organizations, Austin, Tex., accompanied by Bill Ogle, Champion TV & Appliance Rentals, South Daytona, Fla 112
  - Obligations to terminate at any time 113
  - Patchwork legislation will cause double disclosure 114
  - Prepared statement 116
    - Industry profile 116
    - Short term leases 118
    - Service and maintenance 119
    - Federal law 120
    - State law 121
    - Proposed legislation—S. 1152 122
    - Relation to State law 123
    - Disclosures 125
    - Conclusion 127
  - Response to additional questions of Senator Hawkins 128
- Robert S. McGregor, president, Furniture Rental Association of America; accompanied by James Goldberg, general counsel 139
  - Prepared statement 140
    - Survey of consumer leasing practices 150
  - Copies of various contracts supplied for the record 165

Witnesses—Continued

Page

- Milton L. Neumann, president, American Rental Association; accompanied by C. A. Siegfried, Jr., executive director, and William T. Stephens, general counsel 151
  - Prepared statement 152
    - Introduction 152
    - The American Rental Association 152
    - "Lease-to-Own" transactions 153
    - The nature of rental 154
    - Rental-purchase is a misnomer 156
    - Suggested amendment 157
    - General comment 157
    - Conclusion 158

Panel discussion:

  - Insurance coverage on rentals 159
  - Lease-purchase versus rental-purchase 160
  - Leases under Federal law 161
  - Double dipping 162
  - Determining fair market value 163
- Donald R. Brabant, vice president, Indian Head Bank & Trust Co., Portsmouth, N.H., on behalf of the American Bankers Association 180
  - Prepared statement 181
    - Inclusion of lease arrangers in the definition of "Lessor" 185
    - Total lease cost 185
    - Official fees and taxes 188
    - Civil liability 188
    - Relation to State law 189
- Robert Monteith, senior vice president, Consumers Bankers Association, Los Angeles 191
  - Impossible to estimate long-term automobile lease 191
  - Few States require disclosures for long- and short-term leases 192
  - Oral testimony 193
    - Disclosures 195
    - Extensions 197
    - Statutory damage liability 197
    - State laws 198
  - Prepared statement 200
    - Background 203
    - Areas of substantial agreement 205
    - Disclosures for long-term leases 208
    - Depreciation and extensions 211
    - Civil liability 214
    - Relation to State laws 217
    - National Bank Act amendment 222
    - Conclusion 223
    - Appendix A—Title X, Consumer Leasing Act 224
    - Appendix B—Section-by-section analysis 239

Panel discussion:

  - Civil liability restricted to key disclosures 277
  - Payment of attorney fees 278

ADDITIONAL MATERIAL SUPPLIED FOR THE RECORD

- Western Vehicle Leasing Corporation 279
- American Financial Services Association 296
- American Rental Association 298
- Federal Trade Commission 302

CONSUMER CREDIT PROTECTION ACT

TUESDAY, JULY 19, 1983

U.S. Senate,
Committee on Banking, Housing, and Urban Affairs,
Subcommittee on Consumer Affairs,
Washington, D.C.

The subcommittee met at 9:30 a.m. in room SD-538, Dirksen Senate Office Building, Senator Paula Hawkins (chairman of the subcommittee) presiding.

Present: Senators Hawkins, Gorton, and Dodd.

OPENING STATEMENT OF SENATOR HAWKINS

Senator Hawkins. Good morning. Today the Subcommittee on Consumer Affairs commences a hearing on S. 1152, the Consumer Lease and Rental Purchase Agreement Act. I introduced S. 1152 to extend Federal consumer protection coverage to those who enter into short-term rental-purchase agreements and to simplify disclosure provisions required by current law for leasing agreements.

Increasingly, consumers, particularly lower income working people who feel they can't obtain credit, are renting household items such as furniture and television sets without being informed of the total costs they may incur. It has been estimated that the number of such agreements is growing by up to 15 percent a year. However, consumers often enter into such agreements without adequate disclosures.

Yet consumers are afforded no abuse protection on the Federal level, and only spotty protection on the State level from such sharp practices. The current applicable Federal law, the Consumer Leasing Act, covers only leases of 4 months or longer. It does not cover rental-purchase agreements, though, that are automatically renewed if each payment is due in less than 4 months. Thus, these arrangements escape disclosure requirements of the Consumer Leasing Act. Nor are they covered by State usury statutes.

Many have registered complaints against businesses taking advantage of this loophole in the Federal and State consumer protection acts. According to one of today's witnesses, consumers in Miami, Fla., are being encouraged to enter into "buy by renting" arrangements under which they will be the owner of a TV retailing for $637.95, after making a total of $2,109.12 in weekly payments. The renter is not told of this total, and the Federal law does not require its disclosure. The hearing today will focus on the need to extend the Federal consumer protection laws to require that the consumers are given meaningful disclosures under these rent-to-buy arrangements and to determine if even stronger steps are necessary. The Federal Government must take some quick action. We must prevent unscrupulous merchants from taking advantage of low-income people who want to be surrounded by decent furnishings, just like anyone else.

The hearing will also consider whether the interests of consumers and industry will be served if disclosure provisions of the consumer leasing are simplified, as the Truth-in-Lending Act, which covers sales arranged under loan agreements, was revised 3 years ago. The Consumer Lease and Rental Purchase Agreement Act, S. 1152, which is the subject of this hearing, incorporates the Federal Reserve Board's draft legislation aimed at improving the leasing statute. The bill emphasizes disclosure to consumers of essential cost information in a straightforward manner. Thus, it substantially reduces both the number and complexity of the data disclosed, instead concentrating only on the information most useful for shopping and decisionmaking. It also requires that disclosed information be presented separately from other information so as to highlight it further. If properly done, consumers will have a more powerful tool to use in comparison shopping, yet compliance costs imposed on industry will go down.

[Copy of bill being considered follows:]

II

98TH CONGRESS
1ST SESSION

S. 1152

To amend the Consumer Credit Protection Act with respect to consumer leases and rental-purchase agreements.

IN THE SENATE OF THE UNITED STATES

APRIL 27 (legislative day, APRIL 26), 1983

Mrs. HAWKINS introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

---

A BILL

To amend the Consumer Credit Protection Act with respect to consumer leases and rental-purchase agreements.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Consumer Lease and Rental Purchase Agreement Act".

SEC. 2. The Consumer Credit Protection Act is amended by adding at the end thereof the following new title:

"TITLE X—CONSUMER LEASE AND RENTAL-PURCHASE ACT

"Chap.	Sec.
"1. General Provisions	101
"2. Consumer Leases and Rental-Purchase Agreements	111
"3. Enforcement and Liability	121
"4. Miscellaneous	131

"CHAPTER 1—GENERAL PROVISIONS

"Sec.
"101. Short title.
"102. Findings and declaration of purpose.
"103. Definitions and rules of construction.
"104. Exempted transactions.
"105. Regulations.

"CHAPTER 2—CONSUMER LEASES AND RENTAL-PURCHASE AGREEMENTS

"Sec.
"111. General requirements of disclosure.
"112. Consumer lease disclosurees.
"113. Consumer's liability at early termination or at the end of the lease term.
"114. Rental-purchase disclosures.
"115. Renegotiations and extensions.
"116. Consumer lease advertising.
"117. Rental-purchase advertising.

"CHAPTER 3—ENFORCEMENT AND LIABILITY

"Sec.
"121. Administrative enforcement.
"122. Civil liability.
"123. Defenses.
"124. Liability of assignees.
"125. Criminal liability.

"CHAPTER 4—MISCELLANEOUS

"Sec.
"131. Relation to State laws.
"132. Effect on governmental agencies.
"133. Reports by Board and Attorney General.
"134. Effective date.

"TITLE X—CONSUMER LEASE AND RENTAL-PURCHASE ACT

"CHAPTER 1—GENERAL PROVISIONS

"§ 101. Short title

"This title may be cited as the Consumer Lease and Rental-Purchase Act.

"§ 102. Findings and declaration of purpose

"(a) The Congress finds that the leasing of consumer goods continues to be a popular alternative to installment credit purchases. It is the purpose of this title to assure a more meaningful disclosure of the terms of leases of personal property for personal, family or household purposes, permitting the consumer to comapre more readily the various lease terms available; to limit the potential balloon payment in consumer leases to a reasonable amount; and to assure accurate disclosures of lease terms in advertising.

"(b) The Congress also finds that significant number of consumers have begun to acquire ownership of personal property through rental-purchase agreements. These rental-purchase agreements have been offered without adequate cost disclosures. It is the purpose of this statute to assure meaningful disclosure of the terms of rental-purchase agreements; to make the consumer aware of the total cost of the agreement; to inform the consumer when ownership will transfer; and to assure accurate disclosures of rental terms in advertising.

"§ 103. Definitions and rules of construction

"(a) The following definitions apply to this title:

"(1) 'Advertisement' means a commercial message in any medium that aids, promotes, or assists directly or indirectly a consumer lease or a rental-purchase agreement.

"(2) 'Agricultural purposes' includes the production, harvest, exhibition, marketing, transportation, processing, and manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures those agricultural products, including but not limited to the acquisition of farmlands, real property with a farm residence, and personal property and services used primarily in farming.

"(3) 'Board' refers to the Board of Governors of the Federal Reserve System.

"(4) 'Consumer' means a natural person who leases personal property under a consumer lease or rents personal property under a rental-purchase agreement.

"(5) 'Consumer lease' means a contract in the form of a lease or bailment for the use of personal property by a natural person primarily for personal, family, or household purposes, for a period exceeding four months, in which the total lease cost is not more than $25,000, whether or not the consumer has the option to purchase or otherwise become the owner of the property at the expiration of the lease. The term does not include any 'credit sale' as defined in title I.

"(6) 'Consummation' means the time a consumer becomes contractually obligated on a consumer lease or rental-purchase agreement.

"(7) 'Lessor' means a person who regularly provides the use of property through consumer leases or rental-purchase agreements and to whom the obligation is initially payable on the face of the lease or rental-purchase agreement.

"(8) 'Personal property' means any property that is not real property under the laws of the state where it is located when it is made available for a consumer lease or a rental-purchase agreement.

"(9) 'Rental-purchase agreement' means an agreement for the use of personal property by a natural person primarily for personal, family, or household purposes, for an initial period of four months or less (whether or not there is any obligation beyond the initial period) that is automatically renewable with each payment and that permits the consumer to become the owner of the property for no or nominal consideration after making a specified number of payments. The term does not include any 'credit sale' as defined in title I.

"(10) 'Residual value' means the wholesale or retail fair market value of the leased property at early termination or the end of the lease term in a consumer lease.

"(11) 'State' refers to any State, the Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of the United States.

"(b) Unless the context indicates otherwise, lease means consumer lease and agreement means rental-purchase agreement.

"(c) Any reference to any provisions of this title includes reference to the regulations of the Board under this title.

"§ 104. Exempted transactions

"This title does not apply to the following:

"(1) Consumer leases and rental-purchase agreements primarily for business, commercial, or agricultural purposes, or those made with government agencies or instrumentalities or with organizations.

"(2) A lease of a safe deposit box.

§ 105. Regulations

"(a) The Board shall write regulations to carry out the purposes of this title, to prevent its circumvention, and to facilitate compliance with its requirements. The regulations may contain classifications and differentiations and may provide for adjustments and exceptions for any class of transaction.

"(b) The Board shall publish model disclosure forms and clauses to facilitate compliance with the disclosure requirements and to aid the consumer in understanding the transaction. In designating forms, the Board shall consider the use by lessors of data processing or similar automated equipment. Use of the models shall be optional. A lessor who properly uses the models shall be deemed to be in compliance with the disclosure requirements.

"(c) Any regulation of the Board, or any amendment or interpretation thereof, that requires a disclosure different from the disclosures previously required shall have an effective date of October 1 that follows the date of promulgation by at least six months. The Board may at its discretion lengthen that period of time to permit lessors to adjust their forms to accommodate new requirements; the Board may also shorten that period of time if it makes a specific finding that such action is necessary to comply with the findings of a court or to prevent unfair or deceptive practices. In any case, lessors may comply with any newly promulgated disclosure requirement prior to its effective date.

"CHAPTER 2—CONSUMER LEASES AND RENTAL-PURCHASE AGREEMENTS

"§ 111. General requirements of disclosure

"(a) The lessor shall disclose to the consumer the information required by this title. In a transaction involving more than one consumer, a lessor need disclose to only one of the consumers who are primarily obligated. In a transaction involving more than one lessor, only one lessor need make the disclosures.

"(b) The disclosures shall be made at or before consummation of the consumer lease or rental-purchase agreement.

"(c) The disclosures shall be made clearly and conspicuously in writing, in a form that the consumer may keep. The disclosures required under sections 112 and 114 shall be segregated from all other terms, data, or information provided.

"(d) Information required to be disclosed may be given in the form of estimates and identified as such when the lessor does not know the exact information.

"(e) If a disclosure becomes inaccurate as the result of any act, occurrence, or agreement after delivery of the required disclosures, the resulting inaccuracy is not a violation of this title.

"§ 112. Consumer lease disclosures

"For each consumer lease, the lessor shall disclose the following items, as applicable:

"(1) The total of initial payments required at or before consummation of the lease or delivery of the property, whichever is later.

"(2) The number, amounts, and timing of scheduled payments.

"(3) The total of scheduled payments.

"(4) The total of amounts payable at the expiration of the lease (not including any difference between the anticipated residual value and the actual residual value).

"(5) The total lease cost, which is the sum of items (1), (3), and (4).

"(6) The amount of any required security deposit.

"(7) When the consumer buys required insurance from or through the lessor, the total cost. When the consumer does not buy required insurance from or through the lessor, a statement that the consumer must buy insurance and that the cost is not included in the numerical disclosures.

"(8) When any official fees and taxes are paid to or through the lessor, the total cost. When any official fees or taxes are not paid to or through the lessor, a statement that the consumer must pay official fees or taxes and that the amounts are not included in the numerical disclosures.

"(9) Any dollar charge or percentage amount that may be imposed for a late payment, other than a deferral or extension charge.

"(10) A statement that the consumer may be liable for additional amounts if the lease is terminated early.

"(11) When the consumer's liability is based on the residual value of the property, a statement that the consumer may have the property appraised at the consumer's expense by an independent third party agreed to by the consumer and lessor, and that the lessor will be bound by the appraisal.

"(12) When the consumer's liability at the end of the lease term is based on the anticipated residual value of the property:

"(A) The anticipated residual value of the property, marked as wholesale or retail;

"(B) A brief statement of the consumer's potential liability at the end of the lease term;

"(C) The product of three times the average payment allocable to a month; and

"(D) A statement that the consumer's liability will generally be limited to item (12)(C) unless the excess is a result of excessive use or unreasonable wear and use, or the lessor brings a successful court action proving that the estimate of the anticipated residual value was reasonable.

"(13) A statement that the consumer may have other costs and that the consumer should refer to the appropriate lease document for information about nonpayment and default, wear and use standards, and maintenance responsibility.

"§ 113. Consumer's liability at early termination or at the end of the lease term

"(a) When the consumer's liability at the end of the lease term is based on the anticipated residual value of the leased property, the anticipated residual value shall be a reasonable estimate of the actual residual value of the property at the end of the lease term. There shall be a rebuttable presumption that the anticipated residual value is unreasonable to the extent that it exceeds the actual residual value at the end of the lease term by more than three times the average payment allocable to a month. The lessor shall not collect any amount in excess of three times the average payment allocable to a month unless the lessor brings a successful action in court proving that the estimate was reasonable. If the lessor fails to rebut the presumption, the lessor must pay the costs of the action and the consumer's reasonable attorney's fees.

"(b) The presumption in subsection (a) shall not apply to the extent that the excess of the anticipated residual value over the actual residual value is due to damage to the property beyond reasonable wear and use or to excessive use. The lessor may set reasonable standards for wear and use in the lease.

"(c) Subsection (a) does not preclude the right of a willing consumer and lessor to make a mutually agreeable final adjustment with respect to the excess of three times the average payment allocable to a month, provided the agreement is made after the end of the lease term.

"(d) In the lease the lessor may specify penalties or other charges for delinquency, default, or early termination, if the amounts are reasonable in light of the anticipated or actual harm caused by the delinquency, default, or early termination, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.

"(e) When the consumer's liability is based on the residual value of the leased property, the consumer may obtain at the consumer's expense a professional appraisal of the property by an independent third party agreed to by both parties. This appraisal shall be binding on the parties.

"§ 114. Rental-purchase disclosures

"For each rental-purchase agreement, the lessor shall disclose the following items, as applicable:

"(1) The amounts and timing of payments.

"(2) The number of payments and the total of payments necessary to acquire ownership of the property.

"(3) A statement that the consumer will not own the property until the consumer has made the number of payments and the total of payments necessary to acquire ownership.

"(4) A statement that the total of payments does not include other charges, such as late payment, default, pickup, and reinstatement fees, and that the consumer should see the contract for an explanation of these charges.

"(5) A statement that the consumer is responsible for the fair market value of the property if it is lost, stolen, damaged, or destroyed.

"(6) A statement indicating whether the property is new or used.

"§ 115. Renegotiations and extensions

"(a) A renegotiation occurs when an existing consumer lease or rental-purchase agreement is satisfied and replaced by a new lease or agreement undertaken by the same lessor and consumer. A renegotiation is a new lease or agreement requiring new disclosures. However, events such as the following shall not be treated as renegotiations:

"(1) The addition or return of property in a multiple-item lease or agreement provided the average payment allocable to a payment period is not changed by more than 25 per centum.

"(2) A deferral or extension of one or more periodic payments, or portions of a periodic payment.

"(3) A reduction in charges in the lease or agreement.

"(4) A lease or agreement involving a court proceeding.

"(b) No disclosures are required for any extension of a consumer lease or a rental-purchase agreement. However, a lessor that extends or permits a consumer to extend a consumer lease for more than one month beyond the end of the lease term shall (for purposes of section 113) recalculate the anticipated residual value of the leased property to reflect the depreciation resulting from the extended term.

"§ 116. Consumer lease advertising

"If an advertisement for a consumer lease states the amount of any payment or states that any or no initial payment is required, the advertisement must also clearly and conspicuously state the following items, as applicable:

"(1) That the transaction advertised is a lease.

"(2) The total of initial payments required at or before consummation of the lease or delivery of the property, whichever is later.

"(3) That a security deposit is required.

"(4) The number, amounts, and timing of scheduled payments.

"(5) For a lease in which the consumer's liability at the end of the lease term is based on the anticipated residual value of the property, that an extra charge may be imposed at the end of the lease term.

"§ 117. Rental-purchase advertising

"If an advertisement for a rental-purchase agreement refers to or states the amount of any payment or the right to acquire ownership, the advertisement must also clearly and conspicuously state the following items, as applicable:

"(1) That the transaction advertised is a rental-purchase agreement.

"(2) The total of payments necessary to acquire ownership.

"(3) That the consumer acquires no ownership rights if the property is not rented for the term required for ownership to transfer.

"CHAPTER 3—ENFORCEMENT AND LIABILITY

"§ 121. Administrative enforcement

"(a) Compliance with the requirements imposed by this title shall be enforced under—

"(1) section 8 of the Federal Deposit Insurance Act, in the case of

"(A) national banks, by the Comptroller of the Currency.

"(B) member banks of the Federal Reserve System (other than national banks), by the Board.

"(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation.

"(2) section 5(d) of the Home Owners' Loan Act of 1933, section 407 of the National Housing Act, and sections 6(i) and 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions.

"(3) the Federal Credit Union Act, by the National Credit Union Administration with respect to any federal credit union.

"(4) the Packers and Stockyards Act, 1921 (except as provided in sections 406 of that Act), by the Secretary of Agriculture with respect to any activities subject to that Act.

"(5) the Farm Credit Act of 1971, by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit association.

"(b) For the purpose of the exercise by any agency referred to in subsection (a) of its powers under any Act referred to, a violation of a requirement imposed by this title shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (a), each agency may exercise any other authority conferred on it by law in enforcing any requirement imposed under this title.

"(c) Except to the extent that enforcement of the requirements imposed by this title is specifically committed to some other agency under subsection (a), the Federal Trade Commission shall enforce the requirements. For the purpose of exercising its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed by this title shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with the requirements imposed by this title, whether or not that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act.

"(d) The authority of the Board to issue regulations under this title does not impair the authority of any other agency designated in this section to make rules respecting its own procedures in enforcing compliance with requirements imposed by this title.

"§ 122. Civil liability

"(a) Except as otherwise provided in this title, a lessor who fails to comply with a requirement of section 111, 112, 113, 114, or 115 with respect to a consumer is liable to the consumer in an amount equal to the sum of—

"(1) actual damages sustained by the consumer as a result of the violation;

"(2) in the case of an individual action relating to a consumer lease, 25 per centum of the total of scheduled payments under the lease, but not less than $100 nor greater than $1,000;

"(3) in the case of an individual action relating to a rental-purchase agreement, 25 per centum of the total of payments necessary to acquire ownership, but not less than $100 nor greater than $1,000;

"(4) in the case of a class action, the amount the court determines to be appropriate with no minimum recovery as to each member. The total recovery in any class action or series of class actions arising out of the same violation may not be more than the lesser of $500,000 or 1 per centum of the net worth of the lessor. In determining the amount of the award in any class action, the court shall consider, among other relevant factors, the amount of actual damages awarded, the frequency and persistence of the violation, the lessor's resources, and the extent to which the lessor's violation was intentional;

"(5) the costs of the action and reasonable attorney's fees as determined by the court.

"(b) In the case of an advertisement, any lessor who fails to comply with the requirements of sections 116 and 117 with regard to any person is liable to that person for actual damages suffered from the violation, the costs of the action, and reasonable attorney's fees. Any owner or personnel of any medium in which an advertisement appears or through which it is disseminated shall not be liable under this section.

"(c) When there are multiple lessors, liability shall be imposed only on the lessor who made the disclosures. When no disclosures have been given, liability shall be imposed on all lessors.

"(d) When there are multiple consumers in a consumer lease or a rental-purchase agreement, there shall be only one recovery of damages under subsection (a) for a violation of this title.

"(e) Multiple violations in connection with a single consumer lease or rental-purchase agreement entitle the consumer to a single recovery under this section.

"(f) An action under this section may be brought in any United States district court or in any other court of competent jurisdiction within one year of the date of the ocurrence of the violation, except that in the case of a violation under section 113 an action may be brought within one year of the end of the lease term. This subsection does not bar a consumer from asserting a violation of this title in an action to collect the debt brought more than one year from the date of the occurrence of the violation as a matter of defense by recoupment or setoff, except as otherwise provided by State law.

"(g) A consumer may not take any action to offset any amount for which a lessor is potentially liable under subsection (a) against any amount owed by the consumer, unless the amount of the lessor's liability has been determined by judgment of a court of competent jurisdiction in an action in which the lessor was a party. This subsection does not bar a consumer then in default on the obligation from asserting a violation of this title as an original action, or as a defense or counterclaim to an action brought by the lessor to collect amounts owed by the consumer.

"§ 123. Defenses

"(a) A lessor is not liable under sections 121, 122, or 125 for a violation of the requirements of sections 112 and 114 if within sixty days after discovering the error, and before an action under section 122 is filed or written notice of the error is received from the consumer, the lessor notifies the consumer of the error and makes whatever adjustments in the account are necessary to assure that the consumer will not be required to pay an amount in excess of the amounts actually disclosed. This provision applies whether the discovery of the error was made through a final written examination report or the lessor's own procedures.

"(b) A lessor is not lible under section 121 for a violation of this title if the lessor shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error even though the lessor maintained procedures reasonably adapted to avoid such error. Examples of a bona fide error include, but are not limited to, clerical, calulation, computer malfunction and programing, and printing errors. An error of legal judgment with respect to the requirements of this title is not a bona fide error.

"(c) A lessor is not liable under this title for any act done or omitted in good faith in conformity with any rule, regulation, interpretation, or approval promulgated by the Board or by an official duly authorized by the Board. This rule applies even if, after the act or omission has occurred, the rule, regulation, interpretation, or approvai is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

"§ 124. Liability of assignees

"(a) For purposes of sections 122 and 123, the term 'lessor' as used in those sections shall include an assignee of the lessor. However, a civil action for a violation of this title may be brought against an assignee only if the violation is apparent on the face of the disclosure statement. A violation apparent on the face of the disclosure statement includes, but is not limited to, a disclosure that can be determined to be incomplete or inaccurate from the face of the disclosure statement or other documents assigned. An assignee has no liability where the assignment is involuntary.

"(b) In an action by or against an assignee, the consumer's written acknowledgement of receipt shall be conclusive proof that the disclosures were made, provided the assignee had no knowledge that disclosures had not been made when the assignee acquired the obligation.

"§ 125. Criminal liability

"A fine of $5,000 or a prison term of not more than one year, or both, may be imposed on anyone who willfully and knowingly fails to comply with any requirement imposed under this title.

"CHAPTER 4—MISCELLANEOUS

"§ 131. Relation to State laws

"(a) This title does not annul, alter, or affect the laws of any State regarding the disclosure of consumer leases or rental-purchase agreements, nor does this title exempt any person subject to the provisions of this title from complying with the laws of any State with respect to consumer leases or rental-purchase agreements, except to the extent those laws are inconsistent with any provision of this title, and then only to the extent of the inconsistency. The laws of a State are inconsistent if a person is unable to comply with them without violating a provision of this title. The Board is authorized to determine whether such inconsistencies exist.

"(b) The Board shall by regulation exempt from the requirements of this title any class of lease transactions and rental-purchase agreements within any State if it determines that the State law contains requirements substantially similar to those imposed by this title or gives greater protection and benefit to the consumer, and that there is adequate provision for enforcement.

"(c) Except as specified in sections 122 and 123, this title does not affect the validity or enforceability or any contract or obligation under State or Federal law.

"(d) Determinations under this section may be requested by any State.

"§ 132. Effect on governmental agencies

"No civil or criminal penalty provided by this title for violations may be imposed on the United States or any of its departments or agencies, any State or political subdivision, or any agency of any State or political subdivision.

"§ 133. Reports by Board and Attorney General

"Each year the Board and the Attorney General shall report to the Congress concerning the administration of their functions under this title, including any recommendations necessary or appropriate. In addition, the Board's report shall include its assessment of the extent to which compliance with the requirements imposed by this title is being achieved.

"§ 134. Effective date

"(a) This title shall take effect on the October 1 that is at least two years after the date of its enactment.

"(b) All regulations, forms, and clauses required to be prescribed shall be promulgated one year prior to such effective date.

"(c) Notwithstanding subsections (a) and (b), any lessor may comply with the requirements of this title, in accordance with the regulations, forms, and clauses prescribed by the Board, prior to such effective date.".

SEC. 3. (a) Section 102 of the Truth and Lending Act is amended by striking out "(a)" before "The Congress" and by striking out subsection (b).

(b) Section 105(b) of such Act is amended by striking out "or lessee", by striking out "or lessors", and by striking out "or lessor" each place it appears.

(c) Section 105(d) of such Act is amended by striking out ", or chapter 5", by striking out "or lessors" each place it appears, and by striking out "or lessor".

(d) Section 121(a) of such Act is amended by striking out "a consumer lease or", and by striking out "or lessor".

(e) Section 121(b) of such Act is amended by striking out "or one lessor as defined in section 181(3)," and by striking out "or lessor" each place it appears.

(f) Section 122(b) of such Act is amended by striking out "or lessor" and by striking out "chapters 4 and 5" and inserting in lieu thereof "chapter 4".

(g) Section 130(a) of such Act is amended by striking out "or 5", by striking out "(i)", by striking out "or (ii) in the case of an individual action relating to a consumer lease under chapter 5 of this title, 25 per centum of the total amount of monthly payments under the lease,", and by striking out "or 5".

(h) Section 130(b) of such Act is amended by striking out "or chapter 5".

(i) Section 130(d) of such Act is amended by striking out "or consumer lease".

(j) Section 130(g) of such Act is amended by striking out "or 5" and by striking out "consumer lease,".

(k) Chapter 5 of title I of the Consumer Credit Protection Act is repealed.

○

Consumer leasing, whether it involves long-term leasing of cars or short-term rentals of TV sets, is a rapidly growing industry. We need to make sure our laws reflect the new developments in this industry and are strong and clear enough to protect consumers. The object of this hearing is to determine how this can best be accomplished.

The first witness today is Governor Nancy Teeters of the Federal Reserve Board. Governor Teeters, we appreciate you taking time to be here today. I very much appreciated the contribution you and the Board made in sending to Congress the draft to the amendments of the Consumer Leasing Act which I introduced as S. 1152 and which is the subject of the hearing today. I want to thank you for the assistance the Board staff has given my staff an dthe staff of the Senate Banking Committee in preparing for this hearing.

At this point I'd like to request all witnesses to confine their remarks to 10 minutes and your total statements will be made a part of the record.

Governor Teeters.

STATEMENT OF NANCY H. TEETERS, MEMBER, BOARD OF GOVERNORS, FEDERAL RESERVE SYSTEM

Ms. TEETERS. Thank you. I am pleased to appear before this subcommittee on behalf of the Federal Reserve Board to discuss S. 1152, a bill incorporating the Board's proposal to simplify the Consumer Leasing Act. I would like to introduce our staff who spent more than a year working on this particular bill. With me today is Griffith Garwood, who is the Director of the Consumer and Community Affairs Division; Claudia Yarus, Steve Zeisel, Clarence Cain, and Bob Kurtz; and I will, when technicalities get beyond me, refer to staff for help as needed.

[Prepared statement follows:]

Statement by

Nancy H. Teeters

Governor, Board of Governors of the Federal Reserve System

I am pleased to appear before this subcommittee on behalf of the Federal Reserve Board to discuss S.1152 - a bill incorporating the Board's proposal to simplify the Consumer Leasing Act. We believe that simplification of the act along the lines of the proposal could both reduce the burden of compliance and improve the consumer benefits of the legislation.

The Consumer Leasing Act, which was enacted in 1976 following recommendations by the Board, is primarily designed to insure adequate disclosure of the terms of consumer leases of personal property. It followed enactment of the Truth in Lending Act, and reflected the subsequent development of leasing as an alternative to the purchase of consumer goods on credit. The act covers leases of personal property for more than four months when the property is used primarily for personal, family or household purposes. Automobiles are a common type of leased property and we estimate that about 700,000 automobiles are covered by leases subject to the act. The act also covers leases of home furnishings, though it does not apply to month-to-month rentals of televisions and other home appliances. The act also does not cover other types of short-term leasing, such as vacation rental of cars.

According to industry experts, consumers are attracted to leases and rentals because of the absence of a downpayment and because monthly payments are often lower than in comparable credit transactions. Consumers may also be attracted to other unique characteristics, such as the lack of a long-term obligation and freedom from maintenance responsibilities.

When Congress simplified the credit provisions of the Truth in Lending Act in 1980, no major statutory changes were made to the Consumer Leasing Act, although the leasing provisions are part of the Truth in Lending Act. When the Board revised its regulations implementing the Truth in Lending Act in the simplification effort it decided not to change the leasing rules, with the prospect that Congress might consider major statutory revisions.

Representatives of the auto leasing industry, members of the Board's Consumer Advisory Council, consumer representatives, and the appliance rental industry have argued that the act should be amended. Since simplification of Truth in Lending, the Board has studied the possibilities for similar amendments to the Consumer Leasing Act. Our study involved a large number of interested parties. Meetings were held with business representatives to learn about developments in the industry and to explore the need for statutory changes. We also held meetings with representatives of consumer groups to solicit their views on areas of possible abuse and how best to protect consumer rights, while at the same time reducing the burdens on lessors. We sought the views of federal and state agencies on their problems with the present act and their ideas about how to improve it. This work convinced the Board that the act could be improved to make it more effective and less costly.

This is a particularly appropriate time to consider revising the act. Although the number of transactions now subject to the act is comparatively small, there are several indications that the industry -- particularly automobile leasing -- may be poised for significant growth. First, the yields from lease operations were enhanced by the Economic Recovery Tax Act of 1981. We understand that many potential suppliers of consumer leases, primarily financial institutions, are prepared to enter the market quickly if the anticipated demand materializes. Second, firms already in the market have recently attempted to stimulate demand by offering automobile dealers new, attractive leasing programs. Such programs are resulting in greater efforts on the part of dealers to encourage consumers toward leasing. Finally, given the high purchase price of automobiles, dealers are promoting the absence of a downpayment and the lower monthly payments in leases relative to purchases. These characteristics enable a consumer to acquire a more expensive automobile for a given monthly budget.

In general, the bill builds on the principles used in the simplification of Truth in Lending and our experience with that effort. Both the original Truth in Lending and Consumer Leasing Acts seemed to assume that more disclosure was necessarily better disclosure. In both cases this philosophy led to long and complicated disclosure forms and formidable regulations. Over the years, a general consensus has developed that such a disclosure philosophy is probably unwise. Highly detailed disclosure schemes may be self-defeating by obscuring the most important information in the amount of detail provided. Furthermore, compliance with complicated regulations imposes substantial costs, which are ultimately borne by consumers through increased prices or reduced services.

As in the new Truth in Lending rules, the Board has tried to emphasize disclosure of the essential information in a straightforward manner in the proposed consumer leasing revisions. Our objective has been to reduce the burden of compliance on industry, and at the same time to assist consumers by focusing on material disclosures. In order to meet these objectives, the simplification efforts have involved:

- reducing the number of disclosures
- reducing the complexity and redundancy of disclosures
- segregating the disclosures from the other contract provisions to highlight them
- using cross references to the contract for the less important or more detailed terms

- using plain English both in the legislation itself, and in suggested disclosures.

Applying these principles to the Consumer Leasing Act, the bill substantially reduces both the number and complexity of the disclosures. For example, under the current statute there may be as many as 21 disclosures; in the bill this number is reduced to 13.

Although the bill would reduce the burden of compliance on the lessor in many ways, it expands the coverage to rental-purchase agreements. Rental-purchase agreements, sometimes referred to as rent-to-own agreements or terminable leases, generally involve televisions and other home appliances. Under a rental-purchase agreement, the consumer rents the property for a term of one week or one month. The rental is automatically renewed with each subsequent payment, and although there is no obligation to continue payments, the consumer may become the owner of the property.

For many years consumer groups have complained of abuses by some members of this industry. Consumer representatives, for example, have stated that these companies emphasize the ownership option without clearly disclosing the total of payments needed to acquire title, which may be several times the retail price of the goods. In addition, a number of lawsuits have raised the issue of whether property rented to the consumer was new or used. The bill attempts to address these concerns by emphasizing information about how much must be paid before ownership is acquired, the lack of equity in the property until all payments are made, and whether the property is new or used.

The rental-purchase industry, while contending that it fills a legitimate need in the marketplace, is also seeking coverage under the Consumer Leasing Act. The industry believes that federal legislation will ensure uniform treatment and avoid having these agreements characterized as "sales" under state law -- a process that the industry believes subjects them to inappropriate regulation. Thus, we have the unusual situation in which segments of both consumer and business groups support expanded coverage by federal law.

There are several points which I would like to emphasize about our proposal. First, although the Board has done a considerable amount of work developing this simplification proposal, we have submitted it aware of the fact that it may not be the optimal solution in every respect. We fully anticipate that the many groups interested in this law will participate actively in Congressional consideration of the bill and that various modifications may occur during this process.

Second, in the full spirit of regulatory reform, we have not limited our work to improving the substance of the law. We have also attempted to improve the existing structure and language of the law, even when we propose no change in substance. For example, the bill consolidates all of the leasing provisions, now found throughout the Truth in Lending Act, under a separate title. In addition, we have tried to write in plain English, eliminating unnecessary "legalese" from the existing statute wherever possible. This approach, of course, presents some risk that editorial changes may suggest a change in meaning where none was intended. We believe, however, that the benefits of improved readability outweigh any such potential misunderstanding.

Third, we have learned from our experience with implementing the Truth in Lending Act that costs are associated with any "simplification," both for those who are regulated and for the regulatory agency. Initially, revised regulations must be written -- and the rulewriting process involves substantial public participation, which itself involves costs to the industry. When disclosure changes are required, costs must be incurred for retraining employees, printing new disclosure forms, and retaining legal counsel to interpret new requirements and prepare these forms. We have attempted to minimize these costs by simplifying the statutory language and assisting compliance by showing what the disclosure forms might look like. We hope that the one-time conversion costs would be offset by benefits from the simplified rules in the future, but this aspect cannot be ignored in any consideration of the value of revising the act.

Finally, the proper relationship between state and federal laws is always a concern in any federal consumer protection legislation. This bill reflects a narrow preemption of state law, parallel to the approach of the Truth in Lending Act. This is an area that the Congress will have to consider carefully. Persuasive arguments can be made that a broad preemptive standard is desirable given the interstate operations of the industry and the additional costs associated with complying with patchwork state regulation. On the other hand, a strong argument can be made that the citizens of each state have a legitimate interest in determining the level of protection they deem appropriate for their locality. In the area of consumer credit law, the Board has generally been cautious about suggesting broad federal preemption, and the bill reflects this view.

In conclusion, the Board believes it is time to build on the Truth in Lending experience and consider simplifying the Consumer Leasing Act. We are pleased that the Board's draft can serve as a starting place for this consideration. The specific provisions of this bill may, of course, be changed and improved as additional information and the views of other interested parties are considered in the legislative process. We will be pleased to assist the Congress during this process.

Senator Hawkins. Thank you, Governor Teeters.

Senator Gorton has joined us. Do you have a statement?

Senator Gorton. No.

Senator Hawkins. Governor Teeters, an industry witness will testify later today that the typical customer earns $25,000 a year income. The legal aid witnesses will testify that the rental purchase advertisements are aimed at lower income consumers. Which is correct in your mind?

Ms. Teeters. We have very little information on that. However, members of the staff did go around to the rental-purchase agencies which are here in the Washington area and the customers seem to vary significantly. If they are in Anacostia or the lower income neighborhoods, then the customers tend to be lower income people. We found one just west of Dupont Circle. So the income of the customer base may originally have been the lower income, although we have no information to support that. Certainly in the Washington area the industry seems to cover a variety of income levels.

Senator Hawkins. So what you're telling us is we probably have a two-tier market?

Ms. Teeters. We don't really know, but it certainly is possible.

Senator Hawkins. If we do, do both groups need disclosure, in your opinion?

Ms. Teeters. I would think so, yes.

ABUSES IN RENTAL-PURCHASE

Senator Hawkins. An industry witness will testify today that the type of abuses that we see in the rental area are covered by the Federal and State laws prohibiting unfair and deceptive trade practices and they see no need for extending the Consumer Leasing Act to cover short-term leases.

Do you agree with that?

Ms. Teeters. The State laws and the Federal Trade Commission's rules are for compliance and for correction of fraud. This is a disclosure act. This is to tell the consumer what he's buying now and how much he's paying for it. It's not an enforcement act. So they are different types of laws.

My understanding is very few of the States have laws at the present time which cover the rental-purchase transaction.

Senator Hawkins. Should the disclosure be extended to provide the total amount of money the consumer will have to spend to own the property, including the downpayment and any up-front charges, delivery fees, periodic payments, taxes, and any final payment required to exercise the purchase option?

Ms. Teeters. It's not currently on the form that we have, but there's no reason why it couldn't be put there. You certainly want to be sure you've got the monthly payments or number of monthly or weekly payments, the amount of any final lump sum payment, and how long you have to pay. There are some incidental charges which I think are not really necessary to have, such as pick-up and delivery charges and things of that sort. It seems to me if you do put a total cost in the rental-purchase disclosures, the only problem with it is making sure Congress indicates everything that should be included in it.

Senator **Hawkins**. Should the lessor be required to disclose a fair market value of the property if the burden of loss is placed on the consumer?

Ms. **Teeters**. It's a little difficult to know what the fair market value is. Take, for example, a television set. If you buy it at a discount house, the same television set will have one price. If you buy it at a department store, it may have a different price.

In addition, particularly in the furniture area and probably to some extent in the TV area, they are not always new items and they never go on the market. They are manufactured specifically for the lease operation and may be refurbished and then leased again.

So if you can find some way to define fair market value, we can use it, but it's not an easy concept to define.

Senator **Hawkins**. Should the advertising disclosures be required although there's no purchase option?

Ms. **Teeters**. This bill refers to two out of three distinct operations. One is the leasing operation which is any lease of personal property for more than 4 months. There's no ownership feature there. It's strictly a lease and you agree to it for a certain period of time and then the property is returned to the owner. What you're talking about I think is a rent, just pure rent, which is very much similar to a lease but could be much shorter term, like renting a television or a car for a vacation. There's no reason why you couldn't cover renting, but we didn't think it was as open to abuse as these other two industries for purposes of requiring disclosures. Pure rentals are a different operation from rental-purchase and leasing.

Senator **Hawkins**. Well, there's some concern that if it's not done that the appliance retail dealer could simply drop any reference to purchase option in their advertising and contracts but still give an oral purchase option which would be difficult then for the consumer to prove.

Ms. **Teeters**. That's possible. My understanding is that the ownership feature is part of their advertising appeal. Again, this is a disclosure law and it's not an enforcement law. Abuses of this would fall under the State jurisdiction or the Federal Trade Commission.

Senator **Hawkins**. Several State laws now provide that appliance rental transactions with purchase options are credit sales and require extensive disclosures. Should not the preemption of S. 1152 be flexible enough to provide such extended protection?

Ms. **Teeters**. The preemption that we have both proposed here and enacted in Truth-in-Lending is a very limited Federal preemption. It says that the Federal law will take precedence over State law only if the State law is inconsistent with the Federal law, which means that you can have side-by-side disclosures.

Those States that wanted to treat it as a credit purchase could have their own credit purchase disclosures and as long as they are not in conflict and similar to Federal law, there's no reason why the State law can't stand side by side. I understand there are not very many States that have passed laws in this area. Our experience with the original Truth-in-Lending was that because it was enacted relatively early, before the States had passed laws, the States then modeled their laws on the Federal law. I would presume that many States probably would follow the lead of the Federal law in the rental-purchase area if the State provides this consumer protection.

Senator Hawkins. Thank you, Governor Teeters.

Do you have any questions, Senator Gorton.

Senator Gorton. The chairman covered both subjects that I wished to cover, but I'll follow up a little bit on each of them.

NO SUBSTANTIVE REGULATION CONTAINED IN S. 1152

First, you've emphasized that this is simply a disclosure law. That is to say, I gather that there is no substantive regulation of any of these transactions whatsoever contained in the bill.

Ms. Teeters. There's substantive legislation in that the consumer has a disclosure which I understand——

Senator Gorton. But you don't attempt to change any contract rules or prohibit any type of contract?

Ms. Teeters. No. Neither does Truth-in-Lending.

Senator Gorton. I understand that. Is that because you feel it inappropriate for the Congress to limit the amount as opposed to retail price which could be used to make a purchase, that that should be entirely a matter of State law, or is it for some other reason?

Ms. Teeters. I'm not even sure it's a State law. I don't know of any law that——

Senator Gorton. You missed my point. Is your failure to include any substantive as opposed to disclosure provisions because you feel it inappropriate for Federal legislation to do that as opposed to leaving that to State legislation?

Ms. Teeters. Yes. It seems to me that price setting in almost every instance is left to the private market. The only place—the obvious place where it isn't is in the provision of utility services. In terms of goods and services, other than utilities, the prices are set in the market.

What Truth-in-Lending and this consumer leasing law attempt to do is to give the customer the information in order to be able to judge the price, rather than to set a limit on what the price can be.

NARROW PREEMPTION OF STATE LAW

Senator Gorton. The second subject which the chairman covered in part is the preemption language in the bill which follows that of Truth-in-Lending. You describe that I think quite correctly as narrow preemption of State law. You have also stated that in connection with Truth-in-Lending there are not very many States which have different or greater disclosures.

Do you have any example of a State which does require a greater disclosure in connection with Truth-in-Lending——

Ms. Teeters. Yes.

Senator Gorton [continuing]. In which there are that kind of disclosure, and can you describe one or two of them and how they work?

Ms. Teeters. All right. The Truth-in-Lending law provides that if a State law provides substantially similar and more stringent provisions they can be exempt from Federal Truth-in-Lending. As I remember, they were Maine, Wyoming—there are about five States altogether.

Senator GORTON. Are they States without exception which provide for the same disclosures or do they provide for more?

Ms. TEETERS. They are almost exactly the same.

Mr. GARWOOD. They would mirror the Federal scheme in some cases and in some they embellish beyond that.

Senator GORTON. So you have no situation in which we would pass this bill in which there would be two separate sets of disclosures required?

Ms. TEETERS. There could be. The States that deal with credit sales, as long as they don't use language, words, which have a different meaning in the State law than what it is in the Federal law, we wouldn't preempt it. If they use total payments on a credit sale which means something different than what total payments does in the Federal law, then we would preempt. But if they have a separate disclosure which is not at odds with the Federal law, you could have double disclosure.

Senator GORTON. And that has not been inconvenient or confusing?

Ms. TEETERS. We ran into an interesting problem with Truth-in-Lending. Most of the States have conformed to the Truth-in-Lending Federal law. We went through Truth-In-Lending simplification and a great many of the States laws were then different from the Federal law. We had a period under the simplification scheme—it's really sort of odd—in which there was more disclosure because it took a while for the States to come into conformance with the new Federal law. There was an extensive period of time in Truth-in-Lending before the new regulations became effective. Truth-in-Lending was passed in March 1980 and was not effective until October 1982, so there was a period in there to adjust to it. We can get double disclosures, but our experience has been that the States do try to conform to Federal law.

Senator GORTON. So the narrow preemption language is wiser than to have a total preemption?

Ms. TEETERS. We have a number of reasons for preferring the narrow preemption. One is we think it's more flexible. It leaves more of the responsibility at the State level. Broad preemption has been proposed in the area of usury. My own personal objection to that lies more in the fact that you get 50 States frequently with 20 or 25 different usury laws and the broad preemption of State usury laws would be a massive headache.

Senator GORTON. Thank you.

Senator HAWKINS. Senator Dodd has some questions and I'll submit them for the record since we have a long hearing today and excuse you at this time. We appreciate your working with us on this legislation.

Ms. TEETERS. Thank you very much.

[Response to questions of Senators Hawkins and Dodd follow:]

QUESTIONS OF SENATOR PAULA HAWKINS

Questions for Governor Teeters

QUESTION 1) S.1152 requires the disclosure of the cost of official fees and taxes. It has been argued that these fees, which are typically registration fees and taxes, change from year to year and that estimating their amount will almost surely be inaccurate. Furthermore, official fees and taxes are set by law, should be the same for all leases, and are therefore valueless for lease shopping. What is the rationale for requiring the disclosure of official fees and taxes? What other consumer disclosure statutes require disclosure of official fees and taxes?

Absent the disclosure of the cost of official fees and taxes, the consumer will be unaware of the aggregate cost of the lease. The figure ostensibly representing the total lease cost will be less than the actual cost ultimately paid by the consumer. This is unavoidable when the lessor is not involved in the payment of the fees (and cannot be expected to know their amounts); but in those cases when the monthly payment to the lessor includes a use tax, or when the consumer must pay the lessor an initial license fee, the consumer should be informed how much more the lease will cost because of the fees. This is more important in the case of a lease than a sale, because a consumer entering a sales transaction owns the property and therefore anticipates paying official fees and taxes; the typical lease customer is less likely to know that such charges will be assessed.

The lessor's estimate of the total official fees and taxes would be based on the assumption that the taxes and fees at the inception of the lease will remain the same for the life of the lease. That is the only basis on which disclosures can be made without asking the lessor to make predictions about the future. While it is true that the assessments of state and local governments may change in later years of the lease, that does not render the total being disclosed any more inaccurate than the other disclosures.

The present Consumer Leasing Act and S.1152 are not alone in requiring the disclosure of official fees and taxes. The 1974 version of the Uniform Consumer Credit Code calls for the disclosure of an "amount paid or payable for official fees, registration, certificate of title, or license fees or taxes" in consumer lease transactions. In addition, if official fees are financed in a consumer credit transaction, they would be itemized as part of the "itemization of the amount financed" in the Truth in Lending disclosures.

QUESTION 2) The Board recommended the disclosure of a "total lease cost," even though its Division of Research and Statistics at the Board strongly argued against this disclosure. This division argued that a total lease cost disclosure might be misleading to consumers. For example, you could have two leases with the same "total lease cost," where one has a high initial payment and lower monthly payments; and the other has higher monthly payments but a lower initial payment. The total lease cost disclosure makes the consumer think they both cost the same, but in fact, the consumer who pays for the lease with the higher initial payment has a higher opportunity cost of funds. Apparently, the Board did not go along with the analysis of its Division of Research and Statistics on this issue. Why not?

The "total lease cost" was intended simply as the sum of all the costs scheduled in the lease, not as the sole embodiment of the lease's value. In addition to the total lease cost, the consumer is given the costs at inception, the schedule of payments, and the end-of-term costs. Only by viewing all of these required disclosures can the consumer get a true picture of the relative values among comparable leases. The value of the total lease cost disclosure lies in its expression of the total dollar amount scheduled in the lease. Without it, the consumer will see only the component parts.

It is possible that the name used in the bill ("total lease cost"), although it is not required to be disclosed, could somehow lead consumers to use the disclosure as the sole disclosure for comparing leases. We see no problem in considering an alternative name to minimize any such problem.

QUESTION 3) I understand that the Federal Reserve Board in the past has determined that a transaction involving renewable short term lease did not constitute a "credit sale." What is the difference between a lease and a credit sale? Do you have any comment on a state law which characterizes a short term consumer lease containing a purchase option as a credit sale?

The Truth in Lending Act defines a credit sale to include a "lease (unless terminable without penalty at any time by the consumer) under which the consumer--(i) Agrees to pay as compensation for use a sum substantially equivalent to, or in excess of, the total value of the property and services involved; and (ii) Will become (or has the option to become), for no additional consideration or for nominal consideration, the owner of the property upon compliance with the agreement." A consumer entering into a rental-purchase agreement does not contract to pay a sum substantially equivalent to, or in excess of, the total value of the property and services involved. Each payment is for the short-term rental period only and does not obligate the consumer to retain the property beyond the short-term rental period.

First, I would like to mention the ways in which a consumer may acquire ownership in a rental-purchase agreement. The consumer may acquire ownership by making a certain number of equal periodic payments (a so-called "automatic transfer of ownership"). The consumer may also acquire ownership through a "buy out" feature (an option to purchase the goods outright at some time during the rental for a lump sum). In some rental-purchase agreements there is both the automatic transfer of ownership and the buy out feature. In other rental-purchase agreements there is only the buy out feature. When you refer to the purchase option I assume you mean any method by which the consumer acquires ownership.

A few states have characterized short-term consumer leases containing a right to acquire ownership as credit sales. It is not really the purpose of this bill, as we see it, to attempt to "characterize" these contractual arrangements. The major purpose of the bill is to see to it that the transactions have accompanying disclosures that adequately inform consumers of their cost. This would be true regardless of their treatment under state law.

QUESTION 4) As part of the Truth in Lending simplification effort, Congress decided that statutory damages would only be available for violation of the "key" disclosures. S.1152, however, does not limit statutory damages to specific key disclosures. Why not?

The simplification of the Truth in Lending Act in 1980 was partly in response to the thousands of law suits under the old law--suits that were often over minor, technical violations of the law. The perceived unfairness of these law suits was partly due to the extremely complex nature of the law. During the simplification process, a great deal had to be done both to reduce the incentives for such law suits and to stop the momentum that appeared to have developed for such hypertechnical litigation. For this reason a number of steps were taken, including reducing the number and complexity of the disclosures, providing model disclosures, and limiting statutory damages to only certain violations.

The history of litigation under the Consumer Leasing Act has been substantially different from the old Truth in Lending Act's history despite the fact that the Consumer Leasing Act has always had the same potential for technical litigation. The amount of litigation over violations of the Consumer Leasing Act has been insignificant. Perhaps leasing customers are more satisfied than credit customers; perhaps attorneys have been less aware of the possibilities of litigation under the Consumer Leasing Act; or perhaps the Consumer Leasing Act has always been a clearer and less complex law than the old Truth in Lending Act. Whatever the reason, the dramatically different histories suggest the need for different treatment. There is no evidence of any need, in this case, to limit statutory damages to "key" disclosures, particularly in light of the very streamlined disclosure requirements.

QUESTION 5) Why are lessors liable for advertising violations under S.1152 when creditors are exempt from the same liability?

The Consumer Leasing Act has always had civil liability for actual damages caused to the individual for advertising violations; in drafting the statutory revisions, we simply retained this provision. Since there has been no litigation under this provision, it does not appear to have caused lessors any problems, and it may well be that it is an effective consumer protection. Holding the lessor liable for advertising violations may serve to insure that lessors comply with the advertising requirements.

QUESTION 6) A witness who will testify later today recommends that lessors be exempted from compliance with state disclosure laws which relate to the specific terms and conditions of consumer leases. This preemption standard would operate so that state laws requiring more disclosures, different disclosures, or more detailed disclosures in consumer leases would be preempted. However, state-required disclosures relating to the terms and conditions imposed by state law would not be preempted. For example, a state disclosure provision that required disclosure of the lessor's warranties would be preempted because it related to the terms and conditions of a consumer lease. However, if the state required a disclosure relating to that state imposed warranty, failure to make that disclosure could lead to liability under the state law. Would you comment on this preemption standard?

The preemption standard recommended by the witness states:

> This title does not annul, alter, or affect the laws of any state relating to the disclosure of information in connection with consumer leases, except that a lessor shall not have any liability under state law for any failure to comply with any state law relating to the disclosure of specific terms and conditions of consumer leases, other than state-required disclosures relating to terms and conditions imposed by state law.

Our understanding of the application of this standard is that a state provision generally requiring the disclosure of, for example, a lessor's warranties would be preempted because such a state provision relates only to the disclosure of terms and conditions of a consumer lease. However, if the state required a specific warranty on all leased automobiles and also required that the warranty be disclosed, this state law would not be preempted because the terms and conditions are imposed by state law.

The standard is based upon the difference between substantive rights and disclosure requirements and it distinguishes between general disclosure requirements and specific ones. It appears to protect the traditional state interest in the substantive rights of the parties to a contract, while eliminating most state disclosure laws. One problem that may arise in applying this standard is in drawing a distinction between a substantive right and a disclosure requirement. Further guidance may be desirable to clearly make this distinction. It should also be noted that adoption of this standard would not necessarily prevent states from requiring more disclosures or more detailed disclosures. It could even provide an incentive for states to regulate with more specificity and detail since their more general requirements would be preempted under this standard.

QUESTION 7) In your testimony, you state that persuasive arguments can be made for both broad and narrow preemption standards determining the effect of state laws. Can you elaborate on this statement and more fully discuss the arguments for, and against, a broad preemption standard?

There are a number of arguments that support a broad preemption standard. A broad preemption standard creates uniformity in a national policy. It avoids the need to comply with patchwork state regulation and facilitates interstate operations of industry. It also avoids the double burden on industry of complying with both state and federal law.

The possibility of "information overload" is reduced by a broad preemption standard. It could be argued that this approach avoids both repetition of information and different information that could create confusion for the consumer.

There are a number of arguments opposing a broad preemption standard. With a narrow preemption standard states may more effectively regulate industry. States have a long-standing legitimate interest in protecting the economic welfare of their citizens. A narrow preemption standard allows states to respond to developments and conditions in their local areas.

With a narrow preemption standard the federal law may be viewed as a minimal foundation, allowing the states to build upon it. The consumer may receive more information and have additional rights beyond what the federal law provides.

QUESTION 8) A specific preemption issue which is raised by this legislation is the extent to which state law can define rental purchase agreements as credit sales. The Cash Discount Act specifically prohibits states from characterizing cash discounts as a finance charge for purposes of the state's usury or other laws. Would you recommend that we follow the Cash Discount Act and prohibit states from characterizing rental purchase agreements as credit sales? (If so, why or if not why not?)

S.1152 attempts to recognize the special characteristics of rental-purchase agreements rather than force them into molds created for other types of transactions. They are not "characterized" as either leases or credit sales. That is why rental-purchase agreements have a separate set of disclosure and advertising rules, rules that were tailored for the features that are unique to rental-purchase agreements. However, we question whether the method employed by a state legislature or court to fashion remedies to substantive problems should be the concern of a federal disclosure statute. The rental-purchase provisions of S.1152 are only disclosures. They do not attempt to address issues like rate or price ceilings, or collection practices--issues that have traditionally been within the province of state law.

The Cash Discount Act was an unusual attempt to address a problem that the Congress felt was of overriding importance: cash customers subsidizing credit card customers by paying the same price for goods. We see no reason why such extreme measures are necessary in this case.

QUESTION 9) The definition of rental purchase agreement in S.1152 does not contain a reference to a purchase or buy-out option. One of the witnesses here today will recommend that the existence of a purchase option be included in this definition. Do you have any comment?

The definition of rental-purchase agreement in S.1152 covers agreements where the consumer acquires ownership by making a certain number of equal periodic payments (a so-called "automatic transfer of ownership"). It also covers rental-purchase agreements that have a "buy out" feature (an option to purchase the goods outright at some time during the rental for a lump sum) in addition to the automatic transfer of ownership.

The definition does not, however, cover those transactions where the consumer can acquire ownership of the property only by paying a lump sum payment. These transactions do share certain characteristics with those that are covered--they both provide the consumer with the possibility of becoming the owner at a future time and, since the ownership potential is an attractive marketing feature, they may present a similar need for consumers to understand the cost of ownership. Since they are similar in those respects we would not object to the definition being expanded to cover them.

If the definition is changed to include these agreements, of course, changes must be made to the disclosure and advertising requirements, for example, to reflect the amount of the final lump sum payment.

QUESTION 10) One of today's witnesses is not very happy about the term "rental purchase agreement." He argues that there is a great deal of confusion and misconception about the rental concept; and that what my bill calls a rental purchase agreement should more appropriately be termed a "lease-purchase agreement." Do you have any reaction to this semantic change?

The Board would have no objection to the use of another term such as "lease-purchase agreement." Our concern is that the term reflect the hybrid characteristics of the transaction and carry out the purpose of the law.

QUESTION 11) The advertising provisions for rental purchase agreements of S.1152 require that where one advertises "rent to own" or an ownership option, then one must also indicate the total payments necessary to acquire ownership. A witness from the rental purchase industry points out that "rent to own" advertising is generic, and that in a small print ad or 30-second T.V. spot it would be impossible to include total cost disclosures for all of the appliances available for rental. For example, if you advertise the ownership feature by saying "rent to own" in an ad, should you have to disclose the total payments required for ownership of all 20 or 30 or 50 products you rent?

No. Under the advertising provisions for rental-purchase agreements of S.1152, a lessor offering 30 or 50 products in an advertisement would not have to give the total of payments for each item. We would expect to adopt the same concept used in Truth in Lending which permits a creditor to give a typical example of the terms being offered when more than one type of financing is available. Therefore, the lessor who advertises 20 or 30 products may use one or more representative examples in the advertisement. Of course, the lessor would be expected to use the most typical product(s) rented rather than the least expensive item.

QUESTION 12) What would you think about allowing anyone, not just the states, to be able to ask the Federal Reserve Board for a determination of whether a particular state law is preempted?

The current regulations governing preemption for consumer leasing provide that only states may apply for preemption determinations. This provision was carried over into the revised draft that the Board submitted to the Congress. If the Congress decides not to follow the current provisions, it would be reasonable to permit anyone to ask for a preemption determination.

QUESTION 13) Do you think that the lease and rental purchase agreement provisions of a revised Consumer Leasing Act should be segregated into different titles of the act?

The Board would have no objection to the lease and rental-purchase agreement provisions being in separate titles. However, absent some overriding reasons to create two titles, we believe one title can be effective.

Putting the lease and rental-purchase agreement provisions into separate titles would require considerable repetition of the general provisions --for example, rule-writing authority and liability. It would also probably result in two separate regulations and, since each rule-writing process involves substantial public participation, this could increase costs to the industry. Furthermore, because the activities of some members of the industry might fall under both the lease and rental-purchase provisions, if the provisions are in one regulation it would be more convenient for them and may facilitate compliance.

If the format of S.1152 is adopted, we would expect our regulations to distinguish the rules for leases and rental-purchase agreements as is done for open-end and closed-end credit in Regulation Z. This would require only minor repetition and duplication.

QUESTION 14) One of the witnesses suggests that if there is to be a one year statute of limitations for affirmative actions, then the proposed section 122(f) should be amended to allow the consumer to assert a violation by way of recoupment in an action to collect the debt, as in Truth in Lending. Is recoupment applicable to leasing transactions? What are your comments on this suggestion?

Recoupment is applicable to leasing transactions. Section 122(f) of S.1152 contains the identical provision found in Truth in Lending. The pertinent language reads: "This subsection does not bar a consumer from asserting a violation of this title in an action to collect the debt brought more than one year from the date of the occurrence of the violation as a matter of defense by recoupment or set-off, except as otherwise provided by state law."

QUESTION 15) Several witnesses argued the merits of including a "fair market value" estimate of the leased property. One witness suggested that the fair market value could be calculated by using the purchase price the lessor paid plus a profit plus the maximum allowable finance charge. Would you recommend the disclosure of the fair market value of the leased property? If so, how would you calculate it? What is your reaction to the above formula for fair market value?

All methodologies suggested to date for estimating the fair market value (FMV) of a rented product raise practical problems and contain arbitrary elements. For example, disclosing a FMV defined to be the retail price raises practical problems about which retail price to use. For some rented products there may be a wide range of retail prices, the price offered in a discount house being different from that in a department store. For other rented products a retail market may not exist, for example, used appliances or furniture manufactured specifically for the rental industry. The FMV methodology outlined in the question would involve arbitrary decisions by the lessor--or arbitrary rules imposed on the industry--regarding overhead and related costs and profit margins. Its failure to take explicit account of the value of the other services often involved in rental agreements (such as continued maintenance and replacement of defective goods) and its inclusion of maximum allowable finance charges both raise questions about whether it actually expresses the FMV of what the consumer is getting. The arbitrary nature of the FMV and the burden to lessors would have to be balanced against the potential benefits to consumers.

Questions of Senator Christopher J. Dodd

QUESTION 1) The Fed staff memo and most of today's testimony indicate that presently there are few if any problems with the leasing provisions of the Consumer Leasing Act. The old adage says, "If it ain't broke, don't fix it." What do you consider the compelling reasons for amending those portions of the Consumer Leasing Act that relate to long term leases? What surveys have you done to show that consumers will be served better by your proposed disclosures?

It is hard to argue with the adage, "If it ain't broke, don't fix it." However, it does suggest that there are only two conditions: working and not working. The Consumer Leasing Act works--but it could use improvement.

Consumer leasing was still relatively new when the law was being debated, and the legislative history suggests that many of its provisions were intended to be prophylactic. Because some anticipated problems never developed, some provisions of the law have proved to be excessive. For example, the provision that requires a lessor to pay the consumer's attorney's fees regardless of the outcome of a suit to collect an excess over the three-monthly payment limitation, was apparently designed at least in part to reduce the likelihood of harassing litigation by lessors. It now appears to be unnecessary.

A great deal has been learned since 1976 about the problems and costs of burdensome regulation and over-disclosure of information. The simplification of the Truth in Lending Act was designed to reduce the number and complexity of disclosures in order to reduce the burden on creditors and to improve the clarity of the disclosures to consumers. We think the principles--if not the particulars--of that process are sufficiently universal to justify their use in this case as well.

QUESTION 2) The Fed draft drops a major objective of the present Consumer Leasing Act, namely the objective of providing disclosures to enable people to compare leases to credit sales. What data do you have to demonstrate that few if any of the people who lease might not consider buying on time if they thought it was a better economic proposition? Absent evidence that few if any consumers who sign rental-purchase agreements consider them an alternative to a credit sale - and could secure the necessary credit - isn't the disclosure of some finance charge equivalent figure necessary to enable consumer to compare rental-purchase agreements to credit sales? Couldn't you deal with the differences between rental-purchase agreements and purchase sales by including a disclosure that points out that the total finance charge equivalent may not be relevant to a particular consumer if the different elements of a rental-purchase agreement are important to him or her?

S.1152 does not include in its declaration of purpose the comparison of leases with credit sales. This is not to suggest that no consumers shop for terms between leases and credit sales. It does reflect, however, the belief of the Board that the two are quite distinct types of transactions with important differences and that creation of a way to directly compare costs in any meaningful way would be more of a burden to lessors than a benefit to consumers.

For example, the burden of calculating a "finance charge equivalent" stems from the complexity of the components if it is to be equivalent to the finance charge in a comparable credit transaction. The benefits to the consumer are minimal because some of the components of the charge would be beyond the control of any objective test, making the final figure of very little value for comparative purposes. The fair market value of some goods, for example, or the value of the goods at the end of the lease term (both figures the lessor must know to calculate any "finance charge equivalent") are amounts that are often unverifiable.

The burden on the lessor would be particularly great in the case of rental-purchase agreements. These lessors are often the proprietors of small businesses and have little or no familiarity with complex federal regulatory schemes. The intricacies of coming up with a "finance charge equivalent" that would be truly comparable to a finance charge might strain their capabilities.

We feel that the deficiencies of such a "finance charge equivalent" are so fundamental and pervasive that they would not be remedied by the addition of the warning suggested.

QUESTION 3) The Fed's economic memo suggests the possibility of an additional disclosure of the amount of any charge for early termination. Do you think such a disclosure would be helpful?

Early termination charges can be expected to preserve the yield the lessor would have earned had the lease gone to full term and permit recovery of losses occasioned by the termination. The calculations can be complex. Therefore, an additional disclosure of the amount of early termination charges is likely to be an elaborate disclosure, perhaps entailing a schedule of charges. The value to the consumer of the extra information has to be weighed against the possibility of "information overload." In addition, there is some question whether the possibility of early termination is particularly relevant at the time the consumer is shopping for or entering a lease; to the extent the amount of the penalty would affect the decision to terminate, the consumer will need to get the precise pay-off figure from the lessor at that time in any event. We are not aware of consumer difficulties at the present time with early termination charges, although the potential exists if the market expands to include less financially sophisticated consumers. It should be noted, however, that the bill provides substantive protection to consumers by requiring that early termination charges be "reasonable," thus perhaps making detailed disclosures less necessary.

QUESTION 4) You've stated the normal arguments for differing degrees of preemption, yet there must have been some value judgments that went into the Fed's choice of a narrow preemption standard. Would you please state the major reasons for the Fed's decision to provide a narrow preemption standard?

The Board is generally cautious about suggesting broad federal preemption in the area of consumer credit law. In drafting this provision we were drawing on our past experience with preemption. Our experience has involved narrow preemption standards as directed by the Congress in other statutes.

We believe that the citizens of each state have a legitimate interest in determining the level of protection they deem appropriate for their locality. A narrow preemption standard allows states to repond to local developments and conditions. With state laws in place, consumers may receive more information and have additional rights and protections.

QUESTION 5) Present law seeks to prevent lessors from unfairly attracting customers by low balling with respect to estimates of residual value in open-end leases by restricting a lessee's obligation to cover the difference between the estimated residual value of the property at the beginning of the lease and the estimated value at the end of the lease in two ways. First, it limits the lessee's liability to three payments unless the lessor can prove in court that his original estimate was reasonable and made in good faith. Second, it requires the lessor to pay the lessee's attorney's fees, regardless of who wins the case. By restricting the lessor's obligation to pay attorneys' fees to cases the lessee wins, wouldn't S.1152 encourage low balling? In any event, why not simply limit the lessee's obligation to three monthly payments since it is not the lessee's fault if the residual value is lower than anticipated? Couldn't any difference in value simply be made up either by higher charges to everyone or, as is now being done in closed-end auto leases, by insurance for the difference?

We do not believe that restricting the lessor's obligation to pay the lessee's attorney's fees to cases when the lessee wins will encourage low balling --that is, setting the monthly payments at an artificially low amount, thus requiring the lessee to pay a large balloon payment at the end of the lease term. The three-monthly payment limitation on the lessee's liability at the end of the lease (unless the lessor can prove in court that the original estimate of the residual value was reasonable) applies whether or not the lessor low balls. If the lessor low balls, thus creating a difference of more than three monthly payments between the estimated residual value and the actual residual value, the lessor will have to sue to recover the excess. In all cases to recover that excess the lessor must pay its own attorney's fees. And if the lessor low balls, of course, it will be more difficult to rebut the presumption that the original estimated residual value was not reasonable. Thus, we think there are probably enough safeguards to discourage low balling without the current attorneys' fees provision.

In 1976 there was an issue concerning the authority of national banks, bank holding companies and their subsidiaries to engage in consumer personal property leasing. This issue was very closely intertwined with the provisions of § 183 of the Consumer Leasing Act. To the extent that this authority issue remains, it may not be possible to simply limit the lessee's liability to three monthly payments. However, if the issue is no longer present, a flat limit of three monthly payments would be possible.

Fundamentally, in open-end leases, both the lessor and the lessee have risks. The suggested alternative to the current rule shifts all of the risk (beyond three monthly payments) to the lessor, who then could pass the cost of that risk on to all lessees, either through higher charges to every lessee or through insurance on the difference between the estimated value and actual value. Basically, the choice seems to be between retaining the current rules where the risk is split between the parties in each individual lease or shifting the total risk to the lessor.

Senator HAWKINS. The second panel today is a panel of witnesses. First to testify is Geraldine Azzata, who is an attorney with the National Consumer Law Center in Boston. The center has been in the forefront in the legal and legislative efforts to protect the low-income consumers. I appreciate your coming down from Boston to testify at this hearing. After your testimony, we will hear from two of my constituents from Miami, Fla., Jane Simmons of the Legal Services of Greater Miami, who's been doing an outstanding job in representing clients who have consumer problems. She brought with her one of her clients, Miss Paulette Lee, who will tell us about her problem with a rental agreement.

First, we will hear from Ms. Azzata.

STATEMENT OF GERALDINE AZZATA, ATTORNEY, NATIONAL CONSUMER LAW CENTER, BOSTON, MASS.

[Complete statement with appendix follows:]

Testimony of

GERALDINE AZZATA
STAFF ATTORNEY
NATIONAL CONSUMER LAW CENTER, INC.

INTRODUCTION

My name is Geraldine Azzata. I am an attorney at the National Consumer Law Center in Boston, Massachusetts, and I am here at the invitation of the Subcommittee, to voice the concerns of low-income consumers nationwide about S.1152, the proposed revision of the federal Consumer Leasing Act. Although I will comment upon other sections of the bill, the bulk of my comments will pertain to the Rental-Purchase portion. Since problems concerning appliance rentals have soared during the past four years, we thank the Subcommittee for this opportunity to offer comments on behalf of these low-income consumers.

The National Consumer Law Center is a national support center for the Legal Services Corporation. Founded in 1969, the National Consumer Law Center (NCLC) is widely recognized as a major resource of information on consumer law by attorneys in both the public and private sectors. In its capacity as a national support center, NCLC regularly assists Legal Services lawyers, private lawyers and state attorneys general in the handling of consumer problems. In providing this assistance over several years, NCLC has become aware that a sizable number of appliance rental dealers across the nation engage in abusive practices.

Although abuses by the appliance rental industry were originally found only in the southeast, during the past three years the appliance rental concept has spread nationwide and the abuses have multiplied as well. Some appliance rental industry advertisements and solicitations are targeted at low-income consumers who are often vulnerable and unsophisticated about credit. NCLC presently has on file requests for assistance in appliance rental cases from attorneys in 25 different states. The two major abuses are misrepresentation of the type of lease agreement and a failure to disclose important terms of the agreement.

In regard to misrepresentation, some appliance rental dealers advertise their appliances on a "rent-to-own" basis in a clear attempt to provide the low-income consumer with an alternative to the conventional "credit sale" arrangement. These advertisements often provide that no "down payment" is required and that there will be no "credit check." The consumer is informed that if (s)he makes X number of payments the appliance will be theirs. However, the option to buy is often only used in the advertisement or discussed orally but is not indicated on the printed contract. If there is a dispute between the parties (as to number of payments or ownership), the consumer is at an extreme disadvantage because of the difficulty in proving the existence of an option to purchase.

Aside from the fact that these agreements often mislead consumers into thinking they are acquiring equity in the appliance as they make payments, some contracts are clearly designed to avoid state usury laws. They are designed to induce low-income consumers, who have poor credit or think they do, into these arrangements which are really "credit sales" disguised as leases.[1] Since the contract itself is written as if it were a "pure" lease, the lessors don't disclose the total cost to the low-income consumers involved. As a result, the "rent-to-own" plan might force an unwitting consumer to pay two or three times the price it would cost if the appliance were purchased through a credit sale from a retail appliance seller. The actual finance charge (interest) in a Connecticut case was 140%, which is clearly usurious under that state's usury law.[2] Despite the existence of these abuses, the Truth in Lending Act and the Consumer Leasing Act (both of which require disclosures which would solve some of these abuses) have been found to be inapplicable to most appliance rental transactions,[3A] leaving these low-income consumers unprotected.

---

[1] See Clark v. Rent-It, 685 F.2d 245 (8th Cir. 1982) cert. denied ____ U.S. ____ (1983). An appliance rental contract with an option to buy could be a "credit sale" under the Truth in Lending Act.

[2] See article "Legal-Aid Agencies Take Aim At 'Rent-to-Own' Plan," attached as Appendix A.

NCLC feels that many of the problems concerning appliance rentals could be alleviated by requiring that certain minimum disclosures be made by the appliance rental dealer. S.1152 provides a good starting point in addressing the problems associated with appliance rentals. However, we recommend that more extensive disclosure requirements be included.

Of particular concern is the term "rental purchase contract," which requires that the agreement contain an option to buy. As discussed above, since the opportunity for oral misrepresentation of a purchase option is so great and it is extremely difficult for the consumer to prove an advertising or oral representation of the purchase option, we feel the bill should apply to all week-to-week or month-to-month appliance rental transactions, whether there is a purchase option or not. The disclosures that NCLC feels are essential are discussed below following our commentary on various sections of

---

[3A] Lemay v. Stroman's Inc., 510 F. Supp. 921 (E.D. Ark. 1981); Dodson v. Remco Enterprises, Inc., 504 F. Supp. (Not a "credit sale"); Stewart v. Remco, 487 F. Supp. 361 (D. Neb. 1980); Jones v. Action TV, Pov. L. Rep. (CCH) ¶ 31,446 (E.D. Pa. 1980) (Not a "consumer lease").

S.1152 and the case histories of low-income appliance rental consumers in Connecticut, Ohio, Pennsylvania and South Carolina.

I. CASE HISTORIES OF LOW-INCOME APPLIANCE RENTERS

The following case histories concerning low-income consumers in Connecticut, Ohio, Pennsylvania and South Carolina are illustrative of some of the problems faced by appliance renters in other states. These cases are either currently in litigation, proceeded to judgment in favor of the consumer or were settled. The consumers are represented by Legal Services programs.[3]

A. CONNECTICUT

On January 3, 1981, Regina Allen, pursuant to an advertisement placed by Rent-A-Center (of New Haven, CT) entered into an agreement at her home to rent a stereo component set for $17.95 per week, which included a purchase option after 72 payments. Regina was attracted to the advertisement because of its promise of ownership without the necessity of establishing credit.[4] The component set that was delivered to Regina was "used" but this information was not provided on the rental contract.[5]

---

[3] The following attorneys may be contacted concerning these cases: Joanne Faulkner, Esq., New Haven Legal Assistance, 399 Temple Street, New Haven, CT 06511 (203) 777-4811; Thomas Karol, Esq., Advocates for Basic Legal Equality, 740 Spitzer Bldg., Toledo, OH 43604 (419) 255-0814; David Scholl, Esq., Lehigh Valley Legal Services, 15 South Third Street, Easton, PA, 18015 (215) 253-9305; Anne Johnson, Esq., Palmetto Legal Services, 1316 Main Street, P.O. Box 2267, Columbia, S.C. 29202 (803) 799-9668.

Regina made payments (by money order) regularly under the agreement until they totaled approximately $1,000. The fair market value of the component set at that time, if new, was $500. At this point, Rent-A-Center claimed that three weekly payments were not made on time and an employee called Regina at her place of employment in an attempt to collect each payment. Regina claims that the payments were made and has refused to return the component set and has requested that the payments be credited to her account. Under the terms of the contract, if Regina wants to own the component set she will have to pay an additional $382 to become owner of a set worth only $500.[6]

On or about April 3, 1981, Julia Woodard called Rent-A-Center and inquired about renting a washer and dryer. Julia had been attracted to Rent-A-Center by a television advertisement. Julia agreed to pay a weekly rental of $16.95 and was granted an option to purchase the leased property after 72 weeks of payments, at a total price of $1305.15.[7]

---

[4] Rent-A-Center apparently issued no written advertisements. However, they did extensive advertising on the black radio station in New Haven, CT (WNHC, AM).

[5] *See* copy of rental contract at Appendix B.

[6] *Id.*

The entire transaction was negotiated over the phone. During this conversation Julia was told that she would be paying to Rent-A-Center sums equivalent to the fair market value of the appliances plus reasonable interest. However, at no time did Rent-A-Center tell Julia the fair market value of the appliances.[8] The appliances which were delivered to Julia's home were used, although this was not indicated on the lease contract.

Julia made payments regularly under the contract until she had paid in excess of $900 to Rent-A-Center. Julia decided at that point that she had more than paid for the value of the appliances (which, if purchased new, would have cost approximately $400) and refused to make additional payments. Under the terms of the 72 week lease, in order to buy the washer and dryer, Julia would have had to pay a total of $1,305.15.[9] Julia refused to return the appliance to

---

[7] See copy of rental contract at Appendix C.

[8] Id.

[9] See Lease Disclosure Statement at Appendix D.

Rent-A-Center. Rent-A-Center has sent letters to both Regina Allen and Julia Woodard threatening to file criminal charges against them for failing to return the appliances in their possession.[10]

These two case histories point out several appliance rental abuses. They indicate how contracts are often negotiated in total over the phone. Appliance rental dealers often make representations orally that are not indicated on the written contract, such as giving the mistaken impression that the consumer will be renting "new" appliances. Dealers often falsely imply that the total cost of an appliance rental contract is comparable to the cost for the same appliance under a "credit sale" arrangement, or that the consumer will be paying an amount comparable to the fair market value of the appliance over the course of the contract.

The following required disclosures would solve the problems discussed in these Connecticut cases: (1) requiring disclosure of the total of payments necessary to own the appliance in advertisements or phone conversations, if certain key terms such as the downpayment or periodic payment are mentioned in an advertisement or during a telephone conversation; and, in disclosure statements, requiring disclosure of: (2) whether the appliance is "new" or "used"; (3) The fair market value of the property; and (4) The total of payments necessary to own the appliance.

---

[10] See letter to Regina Allen at Appendix E.

B. OHIO

On or about June 18, 1981, Steve Justus entered into a written agreement with Supreme Electronic, Inc. (Toledo, OH), an appliance rental dealer. According to the terms of that agreement Supreme Electronics agreed to rent a color television to Steve at the rate of $68 per month.[11] The lease contract provides that only 14 monthly payments be made, plus a final "purchase" payment of $272 (a total of $1204). However, Steve was told orally the the set would be his after 17 monthly payments (totalling $1156).[12]

After Steve completed the 17 monthly payments which totaled $1,156.00, Supreme Electronics refused to tender a bill of sale to Steve. Supreme Electronics then demanded that Steve pay an additional $272.00 to become the owner of the television.

---

[11] See copy of lease contract at Appendix F.

[12] Id. Section 14 (Option to Purchase).

However, the fair market value of a new television of the type in Steve's possession did not exceed $800. The television in Steve's possession had previously been rented by Supreme Electronics. Steve recently experienced technical problems with the television and attempted to exercise the warranty coverage (which was supposedly available if the consumer elects to purchase the appliance), but Supreme Electronics has refused to make the necessary repairs. Instead, Supreme Electronics has demanded that Steve make the final payment or return the television set.

This case history again points out the importance of having a clear, complete disclosure statement. A clear disclosure of the total of payments necessary to own the appliance and a statement of the number and amounts of required payments would have provided invaluable consumer information to the low-income consumer involved here. Armed with this information, Steve could have compared the lease cost with the cost of the appliance under a "credit sale" arrangement. Undoubtedly, Steve would have determined that this was a bad deal. Also, a disclosure of the fair market value of the television would have informed Steve that the lease was too costly.

C. PENNSYLVANIA

In November 1977, Harry Jackson was attracted to a television advertisement by Action TV Rental, Inc. (Action)

(Philadelphia, PA). The advertisement emphasized that various appliances could be rented with a low downpayment and low monthly payments. The number, amount, due dates or the total of payments were not disclosed in this advertisement.

Harry telephoned Action in response to this advertisement and entered into a television rental agreement. Harry was to pay $58 as a downpayment, and thereafter make monthly payments. Harry indicated that he intended to purchase the television and was told that this was possible.

Action then sent one of its employees to Harry's home. The monthly charge for the television was then said to be $61.48 instead of $58.00. Despite this discrepancy, Harry agreed to these conditions, and the television was delivered to him the same day.[13]

No disclosure was made to Harry, either verbally or in writing, that the total of payments which he would have to make on the television were 19 payments of $61.48, or a total of $1,168.12.

Harry made regular monthly payments totalling $553.48 by July, 1978, when he experienced financial difficulties. He advised Action of his problems, but an employee refused to accept less than the total amount due and demanded that Harry return the television. The value of the television was clearly less than $500.

At approximately 9:30 A.M. on February 15, 1979, Harry heard a knocking and calling at his door. To his surprise, he saw a man first put his foot through and then climb entirely through his front window. The man, an employee of Action, jumped on Harry's couch and broke the springs in it. As he did so, a group of other men forcibly crashed through the front door, tearing the door off its hinges. The other men were a locksmith and two deputy sheriffs who were apparently there to execute a Writ of Seizure Order on the television. However, Harry had never been served with process and there was apparently no attempt by the locksmith to peaceably open Harry's front door.

While the actions of the deputies and the Action employee in connection with the repossession of the television are clearly beyond the scope of the legislation we are discussing, it points out the dire circumstances that can result from poor disclosure by an appliance rental dealer. Had Harry been informed of the number and amount of payments, total of payments necessary to own the television and the fair market

---

[13] See copy of lease contract at Appendix G.

value of the television he probably would have avoided the transaction. However, these disclosures are also helpful if the consumer has to defend his rights under the appliance rental contract. Harry was disadvantaged because several of the key terms of his agreement were not represented on the lease contract.

D. SOUTH CAROLINA

In March, 1982, Audrey Robinson was attracted to an advertisement by Ace TV Rentals, Inc. (Ace) (Columbia, SC). Ace told her that for a monthly payment of $69.00 she could rent a 25 inch color television. Ace also told Audrey that she would own the television after making 18 consecutive payments. Audrey signed the lease contract with the intent of eventually owning the television. Ace's written advertisements offered a purchase option;[14] however, the lease contract did not mention a purchase option.[15]

Audrey made payments for 13 months (totaling $897.00) and also paid several late charges of $5.00 each.[16] The fair market value of the television at that point was no greater than $500. Soon thereafter Audrey lost her job and stopped making payments to Ace.

---

[14] See Ace advertisement at Appendix H.

[15] See copy of lease contract at Appendix I.

[16] These late charges were not mentioned in the lease contract. See lease contract at Appendix I.

Ace demanded that Audrey return the television and filed a civil action. After several threatening phone calls, Ace employees attached the following hand-written notice to the door of Audrey's residence:

> I am sorry to inform you that we had to turn your acct. [account] over to the police. They will be the next people to contact you. Plus we are turning your name in to the Credit Bureau and every other Rental Company in town. The only way you will purchase anything is by cash only. Have a nice long time in Jail![17]

Attached to this notice was a form stating the language of S.C. Law § 16-34-420 which is titled "Failure to Return Rented Objects."[18] This matter is now in litigation.

Unfortunately, Audrey had previously rented another television from Ace. She made 17 consecutive payments (totaling $1,173) but was unable to make the final payment necessary to obtain ownership. She voluntarily returned that television to Ace.

---

[17] See copy of handwritten notice at Appendix J.

[18] See copy at Appendix K.

The facts in this case indicate that appliance rental dealers may grossly misrepresent the terms of the rental agreement in order to take advantage of the low-income consumer. The facts also indicate that dealers will often tell consumers anything they want to hear in order to make a deal. But, most importantly, Audrey Robinson's case indicates that appliance rental dealers may use threats and intimidation to get the consumer to continue making payments or return the appliance, even when the consumer may have valid claims (such as misrepresentation or fraud) against the dealer based upon the agreed upon contract terms.

II. STATUTORY SECTION ANALYSIS OF S.1152

As indicated by the case histories discussed above, low-income consumers have been victimized by a lack of disclosure of important terms in connection with appliance rental transactions. As it is now written, S.1152 would solve a few of these problems for consumers. However, there are a few glaring loopholes in the legislation that would allow the vast majority of appliance rental dealers to avoid coverage. Also, some of the required disclosures do not go far enough in eliciting information that would be helpful to appliance renters.

§ 103 - Definitions and Rules of Construction

§ 103(9) - The term "appliance rental lease" should be substituted for "rental-purchase agreement." Consumers have been victimized by abusive practices concerning appliance rentals with and without a purchase option. Restricting coverage to transactions with a purchase option will allow many appliance rental dealers to avoid coverage by simply dropping any written reference to a purchase option. However, this will not stop them from orally offering the option to purchase. As dicussed earlier, an oral option is difficult to prove, especially when the lease contract states that "This is a Rental Agreement Only."

S.1152 could easily be changed to apply to all appliance rental leases. Dealers could be required to disclose the yearly cost of the lease (instead of the total of payments) in cases where there is truly no purchase option.

§ 113 Consumer's liability at early termination or at the end of the lease term

§113(a) - The present Consumer Leasing Act provides that the lessor must pay the lessee's attorney's fees in all actions in which the lessee challenges a residual value greater than the amount of three monthly payments. The proposed revision, however, provides that the lessor must pay the consumer's attorney's fees only if the lessor is unsuccessful in his attempt to adhere to an unreasonably high anticipated residual value amount. This deals a damaging blow to consumers, who are already in a tenuous bargaining position. This provision will make lessors more eager to sue for higher residual values and force more consumers to obtain counsel and defend against these suits. The burden of making a concrete prediction as to the residual value of the leased property should remain on the lessor. The lessor has the expertise. Moreover, the consumer cannot effectively insure against this possible liability without tremendous cost.

Section 113(c) allows the lessor and the consumer to reach an agreement as to the amount of the true residual value at the end of the lease term when it exceeds three times the average payment. However, the lessor has the advantage here as well, because a consumer confronted by a possible court action and costly attorney's fees will feel tremendous pressure to settle and avoid a court proceeding.

§ 114 Rental Purchase Disclosure

§ 114(2) - Total of Payments Necessary To Own Property - The elements of this disclosure are insufficient. This disclosure should provide, as accurately as possible, the total amount of money the consumer will have to spend to own the property. Thus, it should include the down payment, any upfront charges (i.e., delivery fees), periodic payments, taxes and any final payment required to exercise a purchase option.

This complete disclosure would not only make the consumer much more knowledgeable about the terms of the rental transaction but would also help compare the cost of an appliance rental contract with a credit sale. While the Section-by-Section Analysis provides that there was no attempt to enable consumers to compare rental costs with the cost as a credit sale, NCLC has learned that the vast majority of appliance renters view renting as an alternative to a credit [illegible]

§ 114(5) - Fair Market Value If Property Is Lost or Stolen - The lessor should be required to disclose the fair market value of the property if the burden of loss (due to excessive wear and tear or theft) is placed on the consumer. The consumer may want to insure against this risk and needs to know what the value is. This disclosure would also prevent haggling about the value of the property between the parties at the time of loss. The Section-by-Section Analysis states that the fair market value of the property at the time of loss cannot be known.[20] However, the lessor can easily disclose the fair

---

[19] In a consent order written by the Superintendent of Consumer Credit Protection in Maine against Hawkes Television, Inc. (an appliance rental dealer) the Superintendent found that 65% of Hawkes customers exercised the purchase option. Hawkes Television, Inc., Decision and Order, May 21, 1982, Bureau of Consumer Protection, State House Station # 35 Augusta, ME 04333.

[20] Section-by-Section Analysis § 114.

market value at the time of renting and a reasonable depreciation formula may be used to determine its value at the time of loss. The initial disclosure of the fair market value would provide an important benchmark.

Also, many appliance rental dealers insure all of their property against theft. Should the consumer be forced to pay the fair market value of the appliance on top of any insurance recovery? The appliance rental dealer should be required to disclose whether the property is insured against loss due to theft or any other kind of loss.

§ 117 Rental - Purchase Advertising

Because of the use of the term "rental-purchase agreement" the advertising requirements do not apply to appliance rental transactions if there is no purchase option. This provides a large loophole for appliance rental dealers. In order to avoid coverage, many appliance rental dealers will simply drop any reference to a purchase option in their advertisements and on their contracts. However, they may still give an oral purchase option which would be difficult for the consumer to prove.

Advertising requirements should apply to all week-to-week or month-to-month appliance rental transactions. As discussed earlier, when there is truly no purchase option, the disclosures can be based upon the yearly rental cost. Present disclosure requirements could remain for rentals with options to buy.

§ 122 Civil Liability

§ 122(f) - Statute of Limitation

The requirement that claims be brought within one year of the disclosure violation is especially discriminatory against consumers who rent appliances. Many week-to-week or month-to-month appliance rental contracts provide for transfer of ownership after 78 weeks or 19.5 months.[21] Moreover, as indicated by the factual case histories discussed in Part I, these agreements usually proceed without incident for well over a year. Since appliance rental consumers are usually poor and uneducated, it is patently unfair to force them to discern a problem and then recognize a disclosure violation within one year. The contracts routinely last for a period of two years. The statute of limitation should be at least that long. However, given the usual duration of these contracts NCLC feels that the statute of limitation should be extended for one year after the end of the lease term.

---

[21] See Lemay v. Stroman's Inc., 510 F. Supp. 921 (E.D. Ark. 1981); Dodson v. Remco Enterprises, Inc., 504 F. Supp. 540 (E.D. Va. 1980); Stewart v. Remco, 487 F. Supp. 361 (D. Neb. 1980).

§ 131 Relation to State Laws

Since S.1152 only provides minimum requirements concerning leases and rental-purchase transactions it is extremely important that the present state preemption language remain intact. Several state laws provide that appliance rental transactions with purchase options are "credit sales" and require extensive disclosure (including disclosure of a finance charge.)[22] Moreover, at least two other states are now considering similar legislation.[23] States should have the right to provide more protection for consumers if their legislatures have found a need for extended protection.

III. RECOMMENDATIONS AND CONCLUSION

NCLC feels that if the concerns that are discussed above are addressed S.1152 can provide meaningful protection for appliance rental consumers. We think that only a few disclosures are necessary to provide this protection. In summary, the disclosures[24] that NCLC feels are necessary are outlined below:

---

[22] See Pa. Stat. Ann. tit. 69 § 1201(6) (Purdon) (Supp. 1982); Minn. Stat. Ann. § 325G.15(1) (1981).

[23] North Carolina; Michigan.

(1) Total of Payments; The total of payments required to own the property (if there is a purchase option). If there is no purchase option the yearly cost should be disclosed. This figure is the amount required to obtain ownership without further obligation under the lease. It would include the downpayment, any upfront charges (i.e., delivery fees), all periodic payments, taxes and any final payment required to exercise a purchase option.

(2) Periodic Payment: The amount of each weekly or monthly payment required under the lease. Also included would be the number and due dates of scheduled payments.

(3) New or Used: It is necessary that the contract state whether the appliance is "new" or 'used". A consumer cannot properly compare this transaction to a credit sale without this information. Also, "used" appliances are often represented as "new."

(4) Default and Late Charges - The disclosure of the default terms or charges are important because they apprise the consumer of how (s)he might get out of the contract and at what cost. The late charge disclosure also helps because it allows the consumer to gauge the financial risk involved. These disclosures are much more helpful to consumers if they are highlighted as disclosures rather than being buried among other contractual language.

---

[24] This outline assumes that the statute would apply to all week-to-week or month-to-month appliance rental transactions, whether or not they have a purchase option.

(5) Fair Market Value of Property - The fair market value of the property at the time of contracting should be disclosed. Since the risk of loss due to theft, damage or unusual wear and tear is often placed upon the appliance renter, (s)he should be informed of the property's fair market value in order to insure against excess liability.

(6) Advertising - The lessor should be required to state the total of payments and whether the property is "new" or "used" if there is a reference to the downpayment or the amount of the periodic payment in the appliance rental advertisement.

These recommendations represent only concerns which are most pressing in the area of appliance rentals. But if enacted, they would constitute an enormous advance and would be of great benefit to the low-income appliance renters across the nation.

We would like to thank the Subcommittee once again for providing us with the opportunity to speak on this important issue. NCLC would be happy to discuss further any of the ideas presented here, or additional questions, should this be helpful at a future time.

APPENDIX A

NORTH HAVEN RENTAL CENTER TARGET OF SUIT

Legal-aid agencies take aim at 'rent-to-own' plan

By PHIL BLUMENKRANTZ
Staff Reporter

Regina Allen was paying about $81 a month toward the purchase of a stereo under a currently popular "rent-to-own" plan.

The deal appeared good on the surface: she would rent the stereo for 17 consecutive months, after which she would automatically become its owner.

What Allen, a New Haven resident, says she never knew was that she would be paying $1,382 for a stereo allegedly worth no more than $500. By her account, she was paying, in effect, 140 percent interest.

Legal-aid agencies throughout the nation are taking aim against such "rent-to-own" plans, which they say are aimed at low-income persons who cannot get credit to buy appliances under conventional arrangements, and who are not in a position to do comparison shopping.

The New Haven Legal Assistance Association has filed a suit against Rent-A-Center in North Haven for allegedly financing sales of washers, dryers, stereos and televisions at effective interest rates as high as 220 percent.

The action is one of at least 12 lawsuits pending nationwide, in which rental agencies have been charged with selling household appliances for two or three times the appliances' retail value. The suits allege the so-called leases financed by the rental agencies are really credit sales at "usurious" rates of interest.

Consumer agencies are not concerned about charges imposed in "convenience" rentals, in which an appliance is rented for a few weeks or a months with no intention of eventual purchase.

But Kenneth Michens, an attorney with the National Consumer Law Center in Boston, says rental agencies typically represent credit sales as week-to-week or month-to-month "leasing" arrangements to get around state-set limits on maximum interest rates.

The action is one of at least 12 lawsuits pending nationwide in which rental agencies have been charged with selling household appliances for two or three times the appliances' retail value.

The New Haven suit, scheduled to be heard Aug. 2 in Superior Court, alleges Rent-A-Center intentionally misled two low-income customers into believing they were buying appliances for about the same amount as they'd pay a regular dealer. In one case, a washer-dryer generally selling for about $400 would have cost one of the plaintiffs, Julia Woodward, $1,385 under one of Rent-A-Center's available leasing arrangements, according to the suit. Allen is the other plaintiff.

The suit alleges Rent-A-Center's rent-to-own option is a "device or disguise used ... to evade the usury laws of Connecticut."

Rent-A-Center's manager, James [illegible], refused all comment on the allegations.

The "rent-to-own" agreements are made at the customer's home, or at a place other than the defendant's place of business, according to the suit.

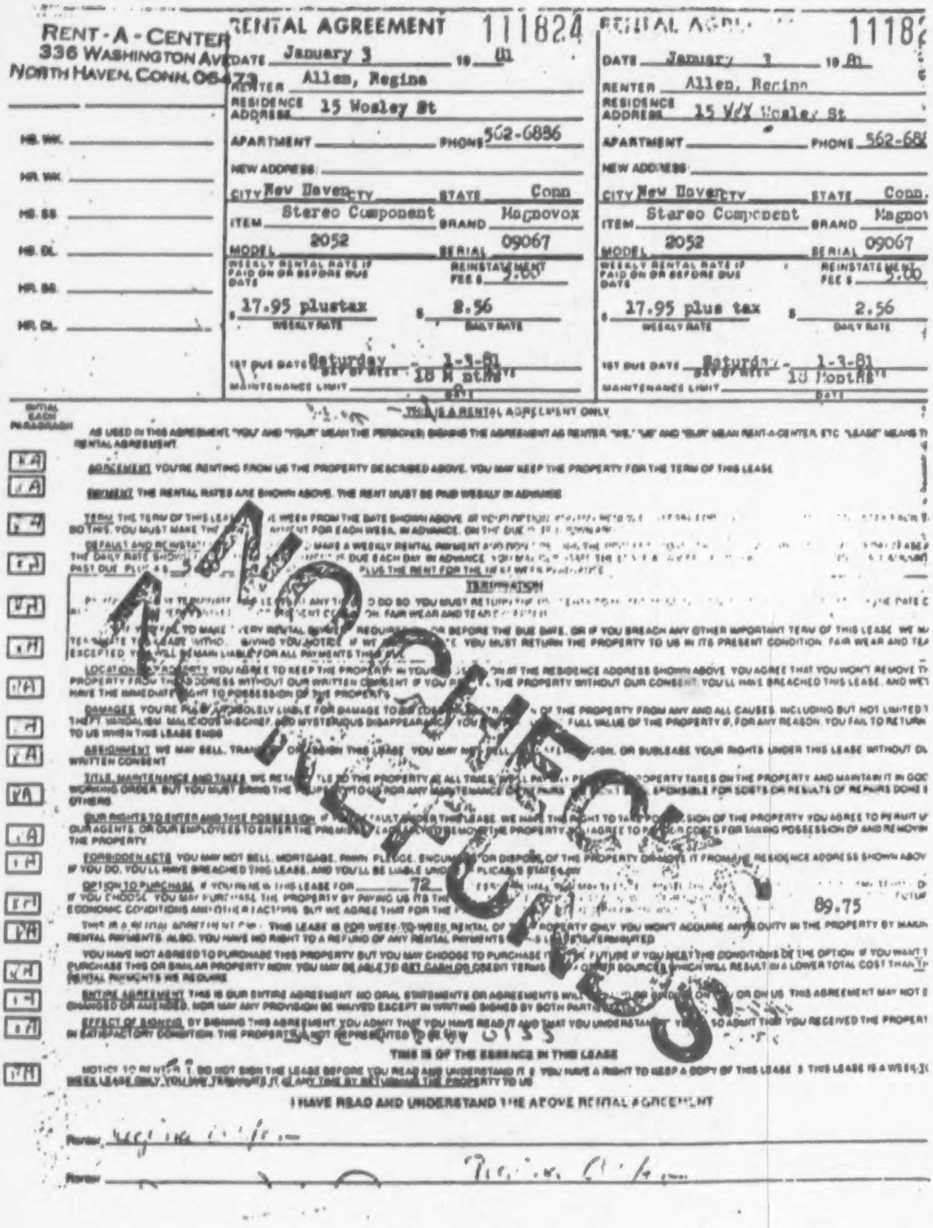
"Such representations are made to induce low-income persons who have limited mobility and who think they are not credit-worthy ... to enter into transactions ... without comparison shopping or obtaining adequate information to make an informed decision," the suit alleges.

New Haven Legal Assistance has petitioned for the suit to be declared a "class action" affecting all customers buying appliances under the "rent-to-own" arrangement. Legal aid attorneys want Rent-A-Center to be ordered to stop "false and deceptive trade practices," refund all fees charged beyond allowable interest rates and award damages to affected customers.

Nationally, agencies representing low-income clients are asking that "rent-to-own" plans be held subject to normal state and federal consumer protection regulations, which require disclosure of the fair market value of any item being purchased, and which forbid credit sales at interest rates above a specified amount.

Their efforts were boosted by a recent order by consumer credit authorities in Maine that a "rent-to-own" plan was a thinly disguised "credit sale." Authorities ordered customers to be reimbursed thousands of dollars in payments that were held to be excessive.

APPENDIX B



RENT-A-CENTER
336 WASHINGTON AVE
NORTH HAVEN, CONN. 06473

HS. WK.
HR. WK.
HS. SS
HS. DL.
HR. SS.
HR. DL.

RENTAL AGREEMENT 111824

DATE January 3 19 81
RENTER Allen, Regina
RESIDENCE ADDRESS 15 Wosley St
APARTMENT ______ PHONE 562-6836
NEW ADDRESS: ______
CITY New Haven STATE Conn
ITEM Stereo Component BRAND Magnovox
MODEL 2052 SERIAL 09067
WEEKLY RENTAL RATE IF PAID ON OR BEFORE DUE DATE
REINSTATEMENT FEE $ 2.00
$ 17.95 plustax WEEKLY RATE $ 2.56 DAILY RATE
1ST DUE DATE Saturday DAY OF WEEK - 1-3-81 DATE
MAINTENANCE LIMIT 18 Months DATE

INITIAL EACH PARAGRAPH

THIS IS A RENTAL AGREEMENT ONLY

AGREEMENT YOU'RE RENTING FROM US THE PROPERTY DESCRIBED ABOVE. YOU MAY KEEP THE PROPERTY FOR THE TERM OF THIS LEASE

PAYMENT THE RENTAL RATES ARE SHOWN ABOVE. THE RENT MUST BE PAID WEEKLY IN ADVANCE

TERMINATION

OPTION TO PURCHASE IF YOU RENEW THIS LEASE FOR 72

89.75

0155

THIS IS OF THE ESSENCE IN THIS LEASE

I HAVE READ AND UNDERSTAND THE ABOVE RENTAL AGREEMENT

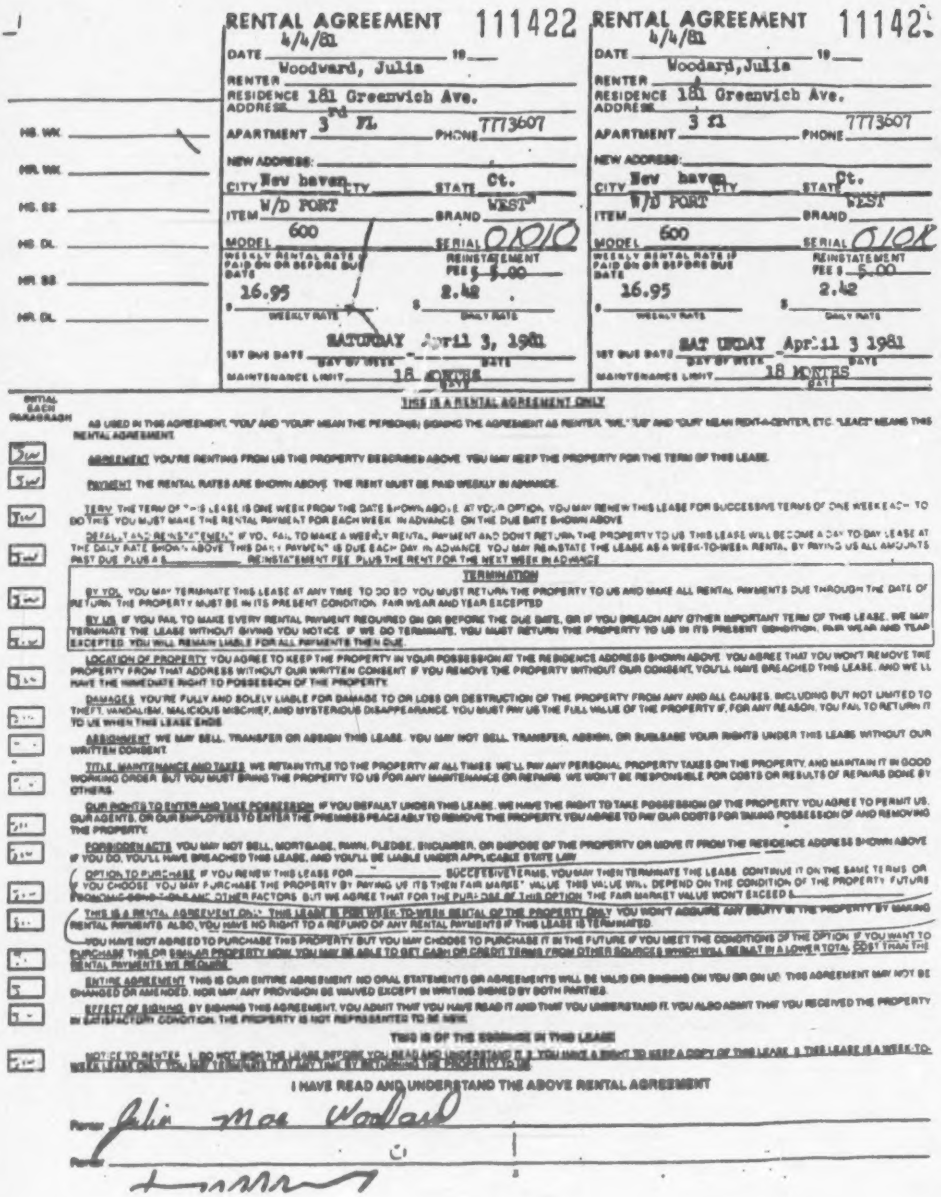
Renter Regina Allen
Renter Regina Allen

NO CHECKS

RENTAL AGREEMENT 1118

DATE January 3 19 81
RENTER Allen, Regina
RESIDENCE ADDRESS 15 Wosley St
APARTMENT ______ PHONE 562-68
NEW ADDRESS: ______
CITY New Haven STATE Conn.
ITEM Stereo Component BRAND Magnov
MODEL 2052 SERIAL 09067
WEEKLY RENTAL RATE IF PAID ON OR BEFORE DUE DATE
REINSTATEMENT FEE $ 5.00
$ 17.95 plus tax WEEKLY RATE $ 2.56 DAILY RATE
1ST DUE DATE Saturday DAY OF WEEK - 1-3-81 DATE
MAINTENANCE LIMIT 18 Months DATE

APPENDIX C



HS. WK. ____
HR. WK. ____
HS. SS ____
HS. DL ____
HR. SS ____
HR. DL ____

RENTAL AGREEMENT 111422

DATE 4/4/81 19__
RENTER Woodward, Julia
RESIDENCE ADDRESS 181 Greenwich Ave.
APARTMENT 3rd FL PHONE 7773607
NEW ADDRESS: ____
CITY New haven STATE Ct.
ITEM W/D PORT BRAND WEST
MODEL 600 SERIAL 01010
WEEKLY RENTAL RATE IF PAID ON OR BEFORE DUE DATE
$ 16.95 WEEKLY RATE
REINSTATEMENT FEE $ 5.00
$ 2.42 DAILY RATE
1ST DUE DATE SATURDAY DAY OF WEEK - April 3, 1981 DATE
MAINTENANCE LIMIT 18 MONTHS DATE

RENTAL AGREEMENT 11142

DATE 4/4/81 19__
RENTER Woodard, Julia
RESIDENCE ADDRESS 181 Greenwich Ave.
APARTMENT 3 fl PHONE 7773607
NEW ADDRESS: ____
CITY New haven STATE Ct.
ITEM W/D PORT BRAND WEST
MODEL 600 SERIAL 0101
WEEKLY RENTAL RATE IF PAID ON OR BEFORE DUE DATE
$ 16.95 WEEKLY RATE
REINSTATEMENT FEE $ 5.00
$ 2.42 DAILY RATE
1ST DUE DATE SAT URDAY DAY OF WEEK April 3 1981 DATE
MAINTENANCE LIMIT 18 MONTHS DATE

INITIAL EACH PARAGRAPH

THIS IS A RENTAL AGREEMENT ONLY

AS USED IN THIS AGREEMENT, "YOU" AND "YOUR" MEAN THE PERSON(S) SIGNING THE AGREEMENT AS RENTER. "WE," "US" AND "OUR" MEAN RENT-A-CENTER, ETC. "LEASE" MEANS THIS RENTAL AGREEMENT.

AGREEMENT. YOU'RE RENTING FROM US THE PROPERTY DESCRIBED ABOVE. YOU MAY KEEP THE PROPERTY FOR THE TERM OF THIS LEASE.

PAYMENT. THE RENTAL RATES ARE SHOWN ABOVE. THE RENT MUST BE PAID WEEKLY IN ADVANCE.

TERM. THE TERM OF THIS LEASE IS ONE WEEK FROM THE DATE SHOWN ABOVE. AT YOUR OPTION, YOU MAY RENEW THIS LEASE FOR SUCCESSIVE TERMS OF ONE WEEK EACH. TO DO THIS, YOU MUST MAKE THE RENTAL PAYMENT FOR EACH WEEK IN ADVANCE ON THE DUE DATE SHOWN ABOVE.

DEFAULT AND REINSTATEMENT. IF YOU FAIL TO MAKE A WEEKLY RENTAL PAYMENT AND DON'T RETURN THE PROPERTY TO US, THIS LEASE WILL BECOME A DAY-TO-DAY LEASE AT THE DAILY RATE SHOWN ABOVE. THIS DAILY PAYMENT IS DUE EACH DAY IN ADVANCE. YOU MAY REINSTATE THE LEASE AS A WEEK-TO-WEEK RENTAL BY PAYING US ALL AMOUNTS PAST DUE, PLUS A $________ REINSTATEMENT FEE, PLUS THE RENT FOR THE NEXT WEEK IN ADVANCE.

TERMINATION

BY YOU. YOU MAY TERMINATE THIS LEASE AT ANY TIME. TO DO SO, YOU MUST RETURN THE PROPERTY TO US AND MAKE ALL RENTAL PAYMENTS DUE THROUGH THE DATE OF RETURN. THE PROPERTY MUST BE IN ITS PRESENT CONDITION, FAIR WEAR AND TEAR EXCEPTED.

BY US. IF YOU FAIL TO MAKE EVERY RENTAL PAYMENT REQUIRED ON OR BEFORE THE DUE DATE, OR IF YOU BREACH ANY OTHER IMPORTANT TERM OF THIS LEASE, WE MAY TERMINATE THE LEASE WITHOUT GIVING YOU NOTICE. IF WE DO TERMINATE, YOU MUST RETURN THE PROPERTY TO US IN ITS PRESENT CONDITION, FAIR WEAR AND TEAR EXCEPTED. YOU WILL REMAIN LIABLE FOR ALL PAYMENTS THEN DUE.

LOCATION OF PROPERTY. YOU AGREE TO KEEP THE PROPERTY IN YOUR POSSESSION AT THE RESIDENCE ADDRESS SHOWN ABOVE. YOU AGREE THAT YOU WON'T REMOVE THE PROPERTY FROM THAT ADDRESS WITHOUT OUR WRITTEN CONSENT. IF YOU REMOVE THE PROPERTY WITHOUT OUR CONSENT, YOU'LL HAVE BREACHED THIS LEASE, AND WE'LL HAVE THE IMMEDIATE RIGHT TO POSSESSION OF THE PROPERTY.

DAMAGES. YOU'RE FULLY AND SOLELY LIABLE FOR DAMAGE TO OR LOSS OR DESTRUCTION OF THE PROPERTY FROM ANY AND ALL CAUSES, INCLUDING BUT NOT LIMITED TO THEFT, VANDALISM, MALICIOUS MISCHIEF, AND MYSTERIOUS DISAPPEARANCE. YOU MUST PAY US THE FULL VALUE OF THE PROPERTY IF, FOR ANY REASON, YOU FAIL TO RETURN IT TO US WHEN THIS LEASE ENDS.

ASSIGNMENT. WE MAY SELL, TRANSFER OR ASSIGN THIS LEASE. YOU MAY NOT SELL, TRANSFER, ASSIGN, OR SUBLEASE YOUR RIGHTS UNDER THIS LEASE WITHOUT OUR WRITTEN CONSENT.

TITLE, MAINTENANCE AND TAXES. WE RETAIN TITLE TO THE PROPERTY AT ALL TIMES. WE'LL PAY ANY PERSONAL PROPERTY TAXES ON THE PROPERTY, AND MAINTAIN IT IN GOOD WORKING ORDER, BUT YOU MUST BRING THE PROPERTY TO US FOR ANY MAINTENANCE OR REPAIRS. WE WON'T BE RESPONSIBLE FOR COSTS OR RESULTS OF REPAIRS DONE BY OTHERS.

OUR RIGHTS TO ENTER AND TAKE POSSESSION. IF YOU DEFAULT UNDER THIS LEASE, WE HAVE THE RIGHT TO TAKE POSSESSION OF THE PROPERTY. YOU AGREE TO PERMIT US, OUR AGENTS, OR OUR EMPLOYEES TO ENTER THE PREMISES PEACEABLY TO REMOVE THE PROPERTY. YOU AGREE TO PAY OUR COSTS FOR TAKING POSSESSION OF AND REMOVING THE PROPERTY.

FORBIDDEN ACTS. YOU MAY NOT SELL, MORTGAGE, PAWN, PLEDGE, ENCUMBER, OR DISPOSE OF THE PROPERTY OR MOVE IT FROM THE RESIDENCE ADDRESS SHOWN ABOVE. IF YOU DO, YOU'LL HAVE BREACHED THIS LEASE, AND YOU'LL BE LIABLE UNDER APPLICABLE STATE LAW.

OPTION TO PURCHASE. IF YOU RENEW THIS LEASE FOR ________ SUCCESSIVE TERMS, YOU MAY THEN TERMINATE THE LEASE, CONTINUE IT ON THE SAME TERMS, OR IF YOU CHOOSE, YOU MAY PURCHASE THE PROPERTY BY PAYING US ITS THEN FAIR MARKET VALUE. THIS VALUE WILL DEPEND ON THE CONDITION OF THE PROPERTY, FUTURE ECONOMIC CONDITIONS AND OTHER FACTORS, BUT WE AGREE THAT FOR THE PURPOSE OF THIS OPTION THE FAIR MARKET VALUE WON'T EXCEED $________.

THIS IS A RENTAL AGREEMENT ONLY. THIS LEASE IS FOR WEEK-TO-WEEK RENTAL OF THE PROPERTY ONLY. YOU WON'T ACQUIRE ANY EQUITY IN THE PROPERTY BY MAKING RENTAL PAYMENTS. ALSO, YOU HAVE NO RIGHT TO A REFUND OF ANY RENTAL PAYMENTS IF THIS LEASE IS TERMINATED.

YOU HAVE NOT AGREED TO PURCHASE THIS PROPERTY BUT YOU MAY CHOOSE TO PURCHASE IT IN THE FUTURE IF YOU MEET THE CONDITIONS OF THE OPTION. IF YOU WANT TO PURCHASE THIS OR SIMILAR PROPERTY NOW, YOU MAY BE ABLE TO GET CASH OR CREDIT TERMS FROM OTHER SOURCES WHICH WILL RESULT IN A LOWER TOTAL COST THAN THE RENTAL PAYMENTS WE REQUIRE.

ENTIRE AGREEMENT. THIS IS OUR ENTIRE AGREEMENT. NO ORAL STATEMENTS OR AGREEMENTS WILL BE VALID OR BINDING ON YOU OR ON US. THIS AGREEMENT MAY NOT BE CHANGED OR AMENDED, NOR MAY ANY PROVISION BE WAIVED EXCEPT IN WRITING SIGNED BY BOTH PARTIES.

EFFECT OF SIGNING. BY SIGNING THIS AGREEMENT, YOU ADMIT THAT YOU HAVE READ IT AND THAT YOU UNDERSTAND IT. YOU ALSO ADMIT THAT YOU RECEIVED THE PROPERTY IN SATISFACTORY CONDITION. THE PROPERTY IS NOT REPRESENTED TO BE NEW.

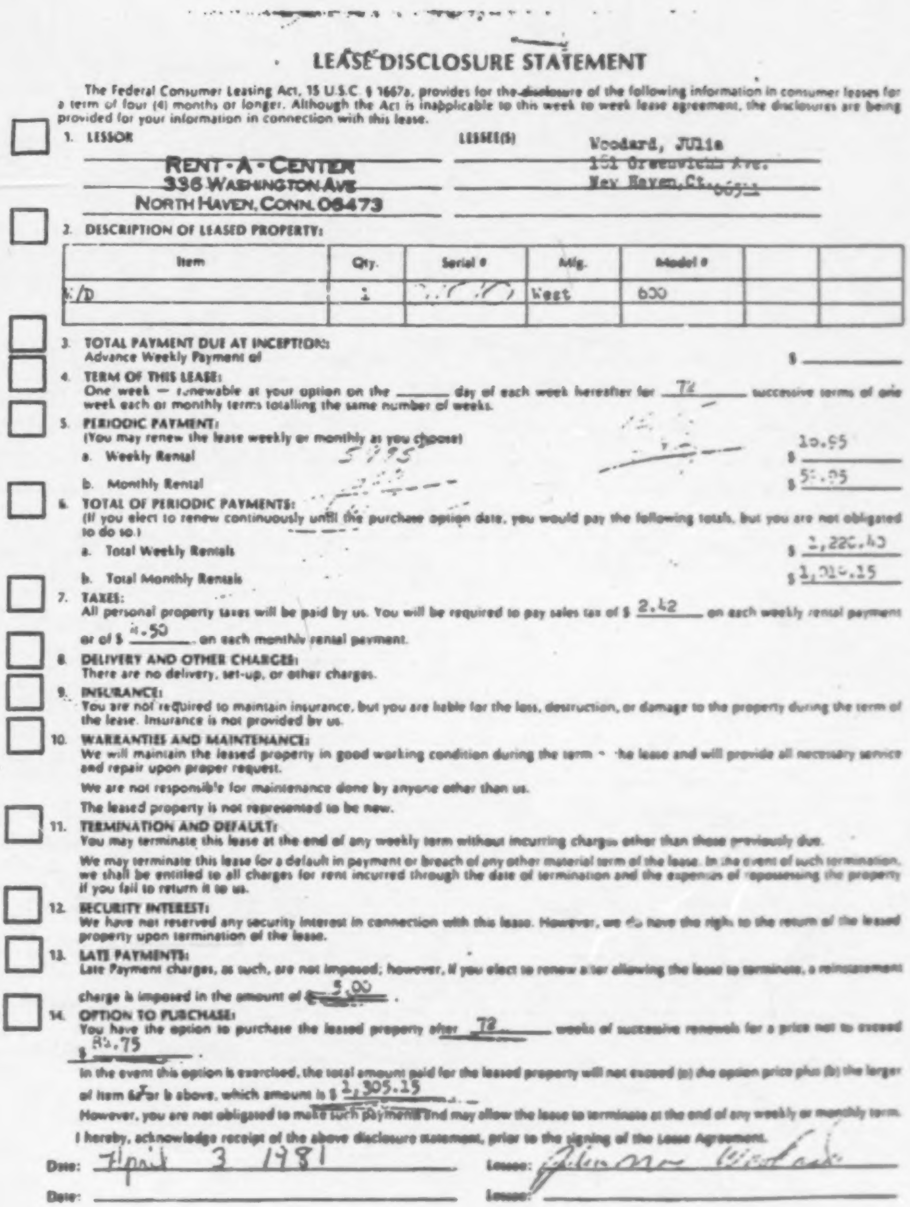
TIME IS OF THE ESSENCE IN THIS LEASE

NOTICE TO RENTER: 1. DO NOT SIGN THIS LEASE BEFORE YOU READ AND UNDERSTAND IT. 2. YOU HAVE A RIGHT TO KEEP A COPY OF THIS LEASE. 3. THIS LEASE IS A WEEK-TO-WEEK LEASE ONLY. YOU MAY TERMINATE IT AT ANY TIME BY RETURNING THE PROPERTY TO US.

I HAVE READ AND UNDERSTAND THE ABOVE RENTAL AGREEMENT

Renter Julia Mae Woodard
Renter ____

APPENDIX D



LEASE DISCLOSURE STATEMENT

The Federal Consumer Leasing Act, 15 U.S.C. § 1667a, provides for the disclosure of the following information in consumer leases for a term of four (4) months or longer. Although the Act is inapplicable to this week to week lease agreement, the disclosures are being provided for your information in connection with this lease.

☐ 1. **LESSOR**

RENT-A-CENTER
336 WASHINGTON AVE
NORTH HAVEN, CONN. 06473

LESSEE(S)

Woodard, Julia
151 Greenwich Ave.
New Haven, Ct. [illegible]

☐ 2. **DESCRIPTION OF LEASED PROPERTY:**

Item	Qty.	Serial #	Mfg.	Model #		
W/D	1	[illegible]	West	600		

☐ 3. **TOTAL PAYMENT DUE AT INCEPTION:**
Advance Weekly Payment of $ ______

☐ 4. **TERM OF THIS LEASE:**
One week — renewable at your option on the ______ day of each week hereafter for 72 successive terms of one week each or monthly terms totalling the same number of weeks.

☐ 5. **PERIODIC PAYMENT:**
(You may renew the lease weekly or monthly as you choose)

a. Weekly Rental 5195 $ 10.95

b. Monthly Rental $ 57.95

☐ 6. **TOTAL OF PERIODIC PAYMENTS:**
(If you elect to renew continuously until the purchase option date, you would pay the following totals, but you are not obligated to do so.)

a. Total Weekly Rentals $ 1,220.40

b. Total Monthly Rentals $ 1,016.15

☐ 7. **TAXES:**
All personal property taxes will be paid by us. You will be required to pay sales tax of $ 2.42 on each weekly rental payment or of $ 4.50 on each monthly rental payment.

☐ 8. **DELIVERY AND OTHER CHARGES:**
There are no delivery, set-up, or other charges.

☐ 9. **INSURANCE:**
You are not required to maintain insurance, but you are liable for the loss, destruction, or damage to the property during the term of the lease. Insurance is not provided by us.

☐ 10. **WARRANTIES AND MAINTENANCE:**
We will maintain the leased property in good working condition during the term of the lease and will provide all necessary service and repair upon proper request.

We are not responsible for maintenance done by anyone other than us.

The leased property is not represented to be new.

☐ 11. **TERMINATION AND DEFAULT:**
You may terminate this lease at the end of any weekly term without incurring charges other than those previously due.

We may terminate this lease for a default in payment or breach of any other material term of the lease. In the event of such termination, we shall be entitled to all charges for rent incurred through the date of termination and the expenses of repossessing the property if you fail to return it to us.

☐ 12. **SECURITY INTEREST:**
We have not reserved any security interest in connection with this lease. However, we do have the right to the return of the leased property upon termination of the lease.

☐ 13. **LATE PAYMENTS:**
Late Payment charges, as such, are not imposed; however, if you elect to renew after allowing the lease to terminate, a reinstatement charge is imposed in the amount of $ 5.00.

☐ 14. **OPTION TO PURCHASE:**
You have the option to purchase the leased property after 72 weeks of successive renewals for a price not to exceed $ 84.75.

In the event this option is exercised, the total amount paid for the leased property will not exceed (a) the option price plus (b) the larger of item 6a or b above, which amount is $ 2,305.15.

However, you are not obligated to make such payments and may allow the lease to terminate at the end of any weekly or monthly term.

I hereby, acknowledge receipt of the above disclosure statement, prior to the signing of the Lease Agreement.

Date: April 3 1981 Lessee: Julia M Woodard

Date: ______ Lessee: ______

APPENDIX E

Rent-a-Center

Regina Allen
27D Eastern Circle
New Haven, CT

RE: Account # [illegible]

You are hereby notified that your agreement has been terminated and that you should contact us at 239-4238 to arrange a time so that we can pick-up our merchandise within 24 hours of your receipt of this letter.

You are further notified of our intent to file criminal charges against you under Connecticut State Law, Title 53-129b Concealment or conveyance of leased property. These charges will be filed on the fifth day following the date of this letter if you have not complied with our request in the first paragraph of this letter.

> **Sec. 53-129b.** *Concealment or conveyance of leased property.* (a) Any person leasing or renting personal property under a written instrument who, with intent to place such property beyond the control of the lessor, conceals or aids or abets the concealment of such property or any part thereof, or fails or refuses to return such property or any part thereof as hereinafter set forth, and any lessee of such property who sells, conveys or encumbers such property or any part thereof without the written consent of the lessor and without informing the person to whom he sells, conveys or encumbers that the same is subject to such lease, shall be fined not more than five hundred dollars or imprisoned not more than six months or both.
>
> (b) Evidence that a lessee (1) used a false or fictitious name or address in obtaining such property, or (2) failed or refused to return such property to the lessor within ten days after expiration of the lease or rental term, and within five days after written demand for such return has been personally served or sent by registered or certified mail to the last-known address of the lessee, whichever shall occur later, shall be prima facie evidence of intent to violate this section.
>
> [illegible]
> [illegible]

The Rent-A-Center

James Furlong
Manager

336 Washington Ave. / North Haven, Connecticut 06473 / [illegible]

APPENDIX F

LEASE AGREEMENT

(CONSUMER LEASE DISCLOSURE STATEMENT)

Date [illegible]

These disclosures are provided pursuant to the Federal Consumer Leasing Act

M [illegible]
Contract No.

LESSOR:
Supreme Electronics, Inc.
Address [illegible] 3190 W. Central
Phone Number [illegible]
Store Number central

LESSEE(S):
Name Steve [illegible] Justus
Address 237 Austen Apt. [illegible]
City Toledo State Ohio
Zip 43608 Phone 255-0166

2. DESCRIPTION OF LEASED PROPERTY:
QUANTITY: 1 Item: 25" Color Console/Oak
Brand: CURTIS MATHES
Model: [illegible] Serial No.: [illegible]

The leased property is not represented as new or unused.

3. TOTAL PAYMENT DUE AT START OF LEASE:
One month advance payment $ 65.00
Delivery Charge $ None
$ [illegible]

4. TERM OF THIS LEASE: 14 months, but see item 12, below, for your right of early termination. The first monthly payment of $ [illegible] is due on [illegible] and 13 subsequent monthly payments of $ [illegible] are due on the [illegible] of each month thereafter. Each monthly payment includes $ _____ for sales tax.

5. TOTAL MONTHLY PAYMENT: $ [illegible]

6. TOTAL MONTHLY PAYMENTS: (Item 5 multiplied by 13, plus item 3) $ [illegible]

7. TOTAL OF OTHER CHARGES PAYABLE TO LESSOR:
Pick up and refurbishing charge of $ [illegible] payable ONLY if you terminate before paying five (5) months rent. (See item 12, below.) $ [illegible]

8. FEES AND TAXES (OTHER THAN SALES TAX):
Total amount you will pay during the term for official fees and taxes $ None

9. INSURANCE:
You (Lessee) are not required to provide or pay for any insurance. We (Lessor) do not provide for any insurance [illegible]
Total premium cost [illegible] $ None

10. MAINTENANCE:
You are responsible for the following maintenance of the leased property:
- To protect it from being damaged except for reasonable ordinary wear and tear.
- To keep the premises, where it is kept and used, secure so as to prevent loss by theft.

We are responsible for the following maintenance of the leased property:
- We will maintain the leased property during the term of the Lease and during the term of any lease given under item 14 below, in good working order providing all parts and labor. We will not be responsible for repairs made by others.

11. WARRANTIES:
The leased property is subject to the following express warranty: 4-Year Limited Warranty given by Curtis Mathes Manufacturing Company (for electronic parts). And see our agreement in item 10, above, to maintain the leased property.

12. EARLY TERMINATION AND DEFAULT:
a. You may terminate this Lease before the end of the lease term under the following conditions: At any time upon notice to us and we will pick up the leased property. The charge for such early termination is that you must pay all lease payments and collection charges, if any, due prior to notice of termination. However, in the event you have made less than five (5) monthly lease payments, you must pay an additional $ [illegible] pick up and refurbishing charge.
b. We may terminate this Lease under the following conditions: If you fail to make the monthly payments on time, or move the leased property without our permission from the location where you agreed to keep it, or the leased property is moved outside [illegible]

Upon termination, we shall be entitled to the following charges: All monthly lease payments due prior to the date of termination plus accrued collection charges, if any. You also agree we may peaceably repossess the leased property upon termination and that you will cooperate in granting us entrance to your premises to allow repossession.

13. COLLECTION CHARGE:
If you do not make a payment when due and we send a person to you to collect the past due payment you will be charged an extra $ [illegible] for that collection.

14. OPTION TO PURCHASE:
You have an option to purchase the leased property at the following time:
At anytime during the 14th month of this Lease provided you have made all required payments. The price will be $ [illegible] plus $ [illegible] sales tax for a total of $ [illegible]. You may pay in cash or by executing a promissory note for the total amount, payable in 4 equal monthly installments of $ _____. No Finance charge is added.

15. WARRANTY IF YOU ELECT TO PURCHASE:
If you elect to purchase, you will receive the balance of the warranty coverage provided under the 4-Year Limited Warranty from Curtis Mathes Manufacturing Company.

OTHER TERMS AND CONDITIONS OF THIS LEASE

16. Ownership of the Leased Property: We (Lessor) are the owner of the leased property and the title, during the term of the Lease, shall always remain with us.

17. Location of the Leased Property: You (Lessee) will keep and use the leased property only at your address as shown in item 1, above. You agree that the leased property will not be moved from that address without getting our written permission in advance for a move. We will move it for you.

18. Right of Assignment: You have no right to sell, transfer, assign, sub-lease or in any way encumber the leased property. We retain the right to sell, transfer, assign or encumber our interest in this Lease Agreement and the leased property.

LESSOR: LESSEE(S): __________

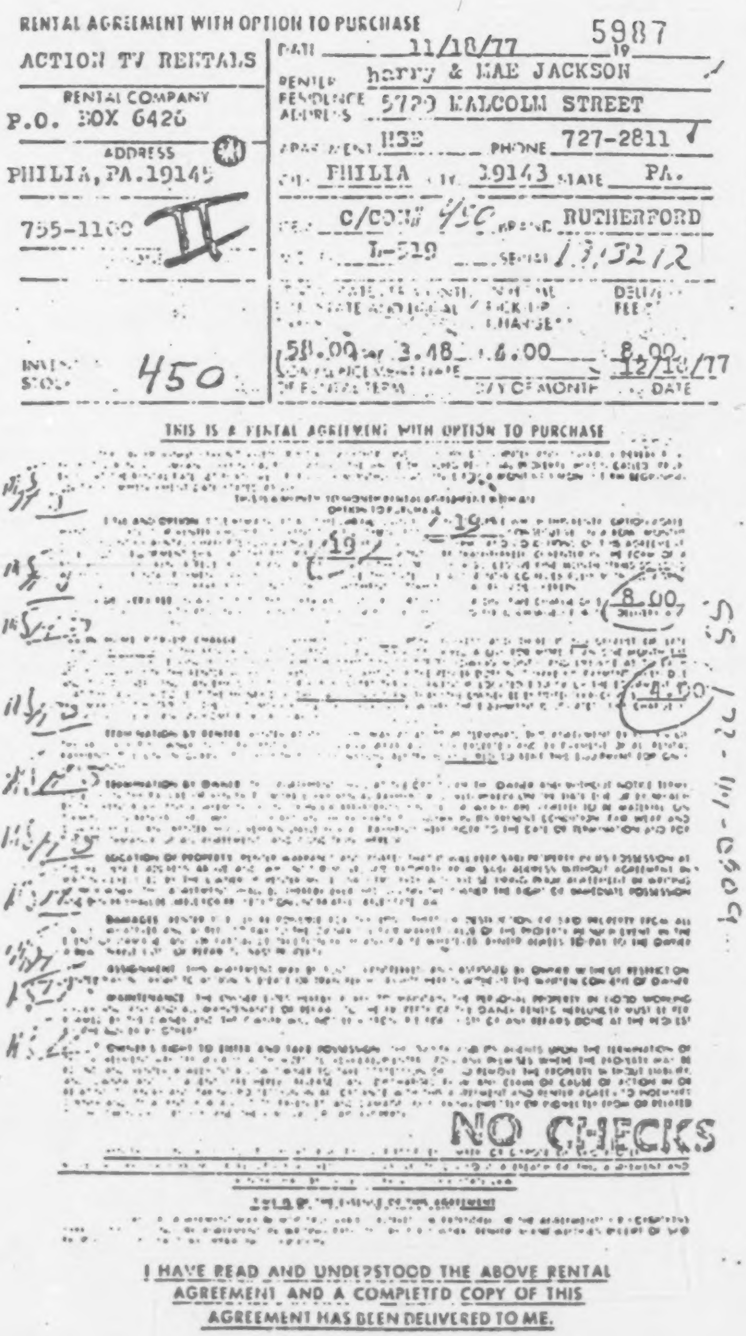
By __________ __________

Copyright © 1981 by Curtis Mathes Sales Company

1) ORIGINAL 2) CUSTOMER 3) HOME OFFICE

EXHIBIT A

APPENDIX G



RENTAL AGREEMENT WITH OPTION TO PURCHASE 5987

ACTION TV RENTALS
RENTAL COMPANY
P.O. BOX 6426
ADDRESS
PHILIA, PA.19145
755-1100

INVENTORY STOCK 450

DATE 11/18/77 19
RENTER harry & MAE JACKSON
RESIDENCE ADDRESS 5720 MALCOLM STREET
APARTMENT B3B PHONE 727-2811
CITY PHILIA ZIP 19143 STATE PA.
C/CONS 450 BRAND RUTHERFORD
L-519 SERIAL 13,3212

58.00 3.48 4.00 8.00
12/18/77
DAY OF MONTH DATE

THIS IS A RENTAL AGREEMENT WITH OPTION TO PURCHASE

19
19
8.00
4.00

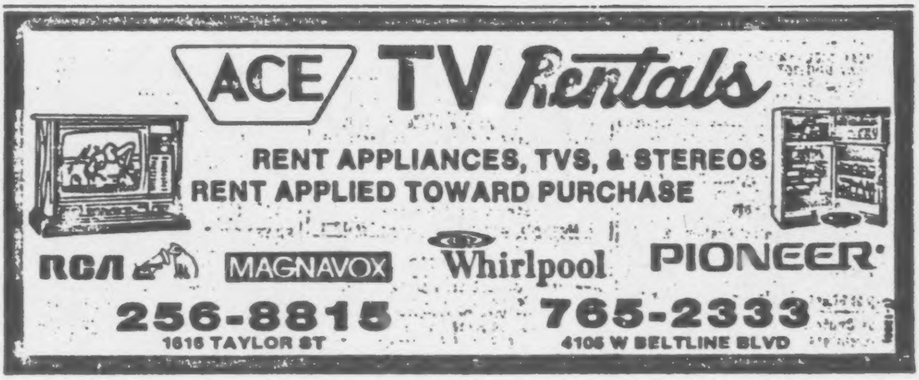
55 - 122 - 111 - 6509

NO CHECKS

I HAVE READ AND UNDERSTOOD THE ABOVE RENTAL AGREEMENT AND A COMPLETED COPY OF THIS AGREEMENT HAS BEEN DELIVERED TO ME.

EXHIBIT [illegible]

APPENDIX H



ACE TV Rentals

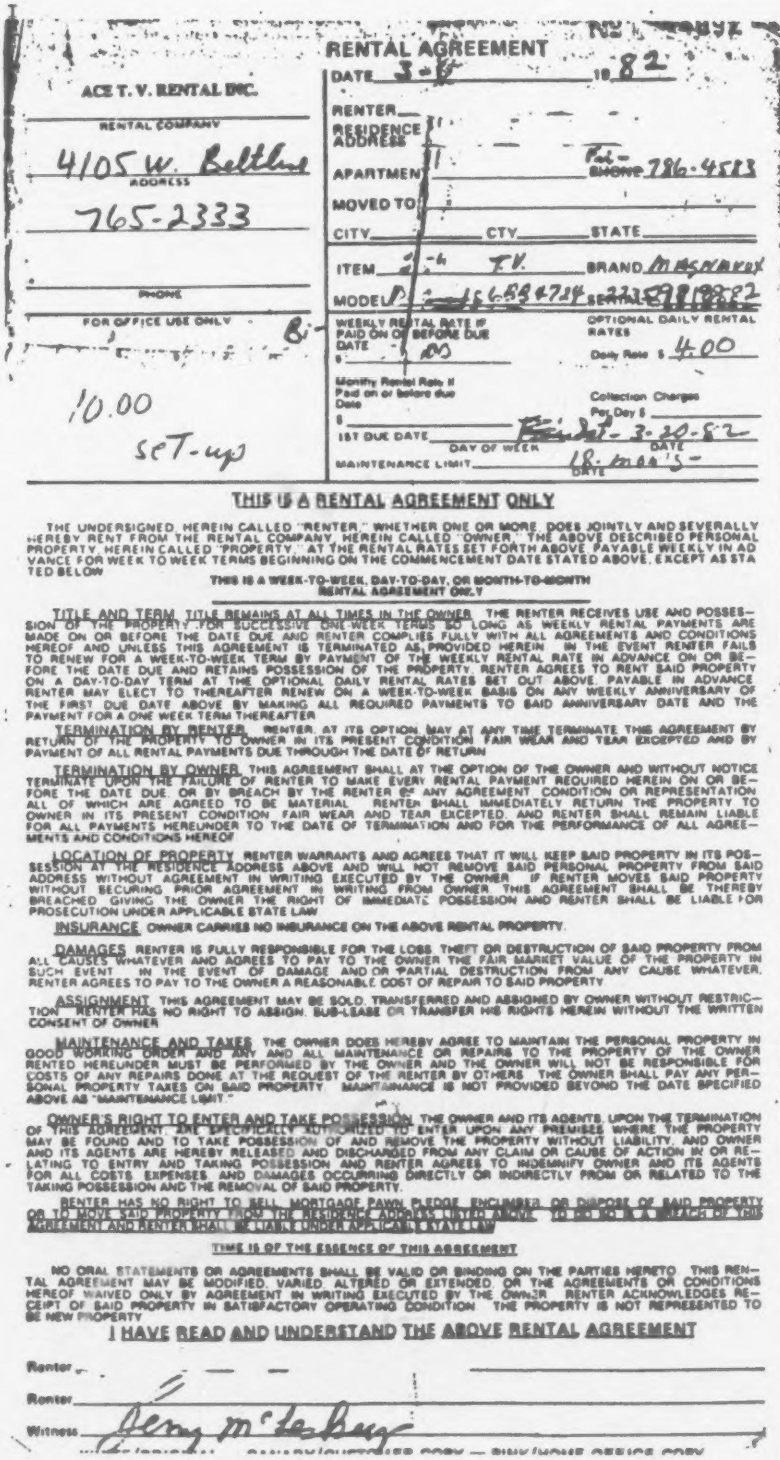
RENT APPLIANCES, TVS, & STEREOS
RENT APPLIED TOWARD PURCHASE

RCA MAGNAVOX Whirlpool PIONEER

256-8815
1616 TAYLOR ST

765-2333
4106 W BELTLINE BLVD

APPENDIX I



RENTAL AGREEMENT

DATE 3-8 19 82

ACE T. V. RENTAL INC.
RENTAL COMPANY
4105 W. Beltline
ADDRESS
765-2333
PHONE

FOR OFFICE USE ONLY

Bi-

10.00
set-up

RENTER
RESIDENCE ADDRESS
APARTMENT PHONE 786-4583
MOVED TO
CITY CTY STATE

ITEM [illegible] T.V. BRAND Magnavox
MODEL [illegible] 16 6BB4724 SERIAL [illegible]

WEEKLY RENTAL RATE IF PAID ON OR BEFORE DUE DATE $ [illegible].00

OPTIONAL DAILY RENTAL RATES
Daily Rate $ 4.00

Monthly Rental Rate If Paid on or before due Date $

Collection Charges Per Day $

1ST DUE DATE Friday - 3-20-82
DAY OF WEEK DATE

MAINTENANCE LIMIT 18 mos's -
DATE

THIS IS A RENTAL AGREEMENT ONLY

THE UNDERSIGNED, HEREIN CALLED "RENTER," WHETHER ONE OR MORE, DOES JOINTLY AND SEVERALLY HEREBY RENT FROM THE RENTAL COMPANY, HEREIN CALLED "OWNER," THE ABOVE DESCRIBED PERSONAL PROPERTY, HEREIN CALLED "PROPERTY," AT THE RENTAL RATES SET FORTH ABOVE, PAYABLE WEEKLY IN ADVANCE FOR WEEK TO WEEK TERMS BEGINNING ON THE COMMENCEMENT DATE STATED ABOVE, EXCEPT AS STATED BELOW

THIS IS A WEEK-TO-WEEK, DAY-TO-DAY, OR MONTH-TO-MONTH RENTAL AGREEMENT ONLY

TITLE AND TERM. TITLE REMAINS AT ALL TIMES IN THE OWNER. THE RENTER RECEIVES USE AND POSSESSION OF THE PROPERTY FOR SUCCESSIVE ONE-WEEK TERMS SO LONG AS WEEKLY RENTAL PAYMENTS ARE MADE ON OR BEFORE THE DATE DUE AND RENTER COMPLIES FULLY WITH ALL AGREEMENTS AND CONDITIONS HEREOF AND UNLESS THIS AGREEMENT IS TERMINATED AS PROVIDED HEREIN. IN THE EVENT RENTER FAILS TO RENEW FOR A WEEK-TO-WEEK TERM BY PAYMENT OF THE WEEKLY RENTAL RATE IN ADVANCE ON OR BEFORE THE DATE DUE AND RETAINS POSSESSION OF THE PROPERTY, RENTER AGREES TO RENT SAID PROPERTY ON A DAY-TO-DAY TERM AT THE OPTIONAL DAILY RENTAL RATES SET OUT ABOVE, PAYABLE IN ADVANCE. RENTER MAY ELECT TO THEREAFTER RENEW ON A WEEK-TO-WEEK BASIS ON ANY WEEKLY ANNIVERSARY OF THE FIRST DUE DATE ABOVE BY MAKING ALL REQUIRED PAYMENTS TO SAID ANNIVERSARY DATE AND THE PAYMENT FOR A ONE WEEK TERM THEREAFTER

TERMINATION BY RENTER. RENTER, AT ITS OPTION, MAY AT ANY TIME TERMINATE THIS AGREEMENT BY RETURN OF THE PROPERTY TO OWNER IN ITS PRESENT CONDITION, FAIR WEAR AND TEAR EXCEPTED AND BY PAYMENT OF ALL RENTAL PAYMENTS DUE THROUGH THE DATE OF RETURN

TERMINATION BY OWNER. THIS AGREEMENT SHALL AT THE OPTION OF THE OWNER AND WITHOUT NOTICE TERMINATE UPON THE FAILURE OF RENTER TO MAKE EVERY RENTAL PAYMENT REQUIRED HEREIN ON OR BEFORE THE DATE DUE, OR BY BREACH BY THE RENTER OF ANY AGREEMENT, CONDITION OR REPRESENTATION ALL OF WHICH ARE AGREED TO BE MATERIAL. RENTER SHALL IMMEDIATELY RETURN THE PROPERTY TO OWNER IN ITS PRESENT CONDITION, FAIR WEAR AND TEAR EXCEPTED, AND RENTER SHALL REMAIN LIABLE FOR ALL PAYMENTS HEREUNDER TO THE DATE OF TERMINATION AND FOR THE PERFORMANCE OF ALL AGREEMENTS AND CONDITIONS HEREOF

LOCATION OF PROPERTY. RENTER WARRANTS AND AGREES THAT IT WILL KEEP SAID PROPERTY IN ITS POSSESSION AT THE RESIDENCE ADDRESS ABOVE AND WILL NOT REMOVE SAID PERSONAL PROPERTY FROM SAID ADDRESS WITHOUT AGREEMENT IN WRITING EXECUTED BY THE OWNER. IF RENTER MOVES SAID PROPERTY WITHOUT SECURING PRIOR AGREEMENT IN WRITING FROM OWNER, THIS AGREEMENT SHALL BE THEREBY BREACHED GIVING THE OWNER THE RIGHT OF IMMEDIATE POSSESSION AND RENTER SHALL BE LIABLE FOR PROSECUTION UNDER APPLICABLE STATE LAW

INSURANCE. OWNER CARRIES NO INSURANCE ON THE ABOVE RENTAL PROPERTY.

DAMAGES. RENTER IS FULLY RESPONSIBLE FOR THE LOSS, THEFT OR DESTRUCTION OF SAID PROPERTY FROM ALL CAUSES WHATEVER AND AGREES TO PAY TO THE OWNER THE FAIR MARKET VALUE OF THE PROPERTY IN SUCH EVENT. IN THE EVENT OF DAMAGE AND/OR PARTIAL DESTRUCTION FROM ANY CAUSE WHATEVER, RENTER AGREES TO PAY TO THE OWNER A REASONABLE COST OF REPAIR TO SAID PROPERTY

ASSIGNMENT. THIS AGREEMENT MAY BE SOLD, TRANSFERRED AND ASSIGNED BY OWNER WITHOUT RESTRICTION. RENTER HAS NO RIGHT TO ASSIGN, SUB-LEASE OR TRANSFER HIS RIGHTS HEREIN WITHOUT THE WRITTEN CONSENT OF OWNER

MAINTENANCE AND TAXES. THE OWNER DOES HEREBY AGREE TO MAINTAIN THE PERSONAL PROPERTY IN GOOD WORKING ORDER AND ANY AND ALL MAINTENANCE OR REPAIRS TO THE PROPERTY OF THE OWNER RENTED HEREUNDER MUST BE PERFORMED BY THE OWNER AND THE OWNER WILL NOT BE RESPONSIBLE FOR COSTS OF ANY REPAIRS DONE AT THE REQUEST OF THE RENTER BY OTHERS. THE OWNER SHALL PAY ANY PERSONAL PROPERTY TAXES ON SAID PROPERTY. MAINTAINANCE IS NOT PROVIDED BEYOND THE DATE SPECIFIED ABOVE AS "MAINTENANCE LIMIT."

OWNER'S RIGHT TO ENTER AND TAKE POSSESSION. THE OWNER AND ITS AGENTS, UPON THE TERMINATION OF THIS AGREEMENT, ARE SPECIFICALLY AUTHORIZED TO ENTER UPON ANY PREMISES WHERE THE PROPERTY MAY BE FOUND AND TO TAKE POSSESSION OF AND REMOVE THE PROPERTY WITHOUT LIABILITY, AND OWNER AND ITS AGENTS ARE HEREBY RELEASED AND DISCHARGED FROM ANY CLAIM OR CAUSE OF ACTION IN OR RELATING TO ENTRY AND TAKING POSSESSION AND RENTER AGREES TO INDEMNIFY OWNER AND ITS AGENTS FOR ALL COSTS, EXPENSES, AND DAMAGES OCCURRING DIRECTLY OR INDIRECTLY FROM OR RELATED TO THE TAKING POSSESSION AND THE REMOVAL OF SAID PROPERTY.

RENTER HAS NO RIGHT TO SELL, MORTGAGE, PAWN, PLEDGE, ENCUMBER OR DISPOSE OF SAID PROPERTY OR TO MOVE SAID PROPERTY FROM THE RESIDENCE ADDRESS LISTED ABOVE. TO DO SO IS A BREACH OF THIS AGREEMENT AND RENTER SHALL BE LIABLE UNDER APPLICABLE STATE LAW

TIME IS OF THE ESSENCE OF THIS AGREEMENT

NO ORAL STATEMENTS OR AGREEMENTS SHALL BE VALID OR BINDING ON THE PARTIES HERETO. THIS RENTAL AGREEMENT MAY BE MODIFIED, VARIED, ALTERED OR EXTENDED, OR THE AGREEMENTS OR CONDITIONS HEREOF WAIVED ONLY BY AGREEMENT IN WRITING EXECUTED BY THE OWNER. RENTER ACKNOWLEDGES RECEIPT OF SAID PROPERTY IN SATISFACTORY OPERATING CONDITION. THE PROPERTY IS NOT REPRESENTED TO BE NEW PROPERTY

I HAVE READ AND UNDERSTAND THE ABOVE RENTAL AGREEMENT

Renter
Renter
Witness Jerry McLesbery

APPENDIX J

I am sorry to inform you that we had to turn your Acct. over to the police. They will be the next people to contact you, Plus we are turning your name in to the Credit Bereau & every other Rental Company in Town. The only way you will Purchase anything is By Cash only. Have A nice long Time in JAil!

APPENDIX K

SOUTH CAROLINA LAW

#16-13-420. FAILURE TO RETURN RENTED OBJECTS; FRAUDULENT APPROPRIATION OF SUCH.

Any person having any motor vehicle, trailer, appliance, equipment, or tool in his possession or under his control by virtue of a lease or rental agreement who willfully and fraudulently fails to return the motor vehicle, trailer, appliance, equipment or tool within seventy-two hours after the lease or rental agreement has expired, or who fraudulently secretes or appropriates the property to any use or purpose not within the due and lawful execution of his lease or rental agreement shall be guilty of Larceny.

FORM #240

Senator **Hawkins.** Thank you so much. Could I ask Miss Lee and Ms. Simmons to come to the table please at this time? We have questions for all three of you. Miss Lee, we would like to hear from you first.

STATEMENT OF PAULETTE LEE, MIAMI, FLA.

Miss **Lee.** My name is Paulette Lee and I live at 11366 SW. 214th Street, Miami, Fla.

On January 19, 1979, I rented a 25-inch color TV from TV World. I had seen it advertised in a TV Facts magazine that was delivered in my neighborhood. I picked one up from work. I saw it advertised, as I stated, that you could buy a TV by renting it and I thought it was a good way for me to buy a TV set.

I signed a contract for a 25-inch color TV and paid $20.28 a week for about a year. I know I paid over $1,000 on the TV and I thought I should own it—you know, be able to own the TV set by then. I called TV World and asked the people how much more I had to pay before I could own the TV set and they told me that they would have to figure it out before they could give me an answer.

I made a couple more payments and then I stopped making payments on the TV. He came to pick the TV up himself and I wouldn't give it up. Maybe a week or two later the sheriff came out and took the TV away.

I went to legal services and then I found out that I would have to pay $2,109.12 before I could own the TV set. Had I known that before I got it, I wouldn't have wanted it. That's it.

[Complete statement follows:]

PRE-FILED TESTIMONY OF PAULETTE LEE BEFORE THE SUBCOMMITTEE ON CONSUMER AFFAIRS, SENATE COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS ON S. 1152, JULY 19, 1983

Honorable Paula Hawkins, Chairman
Subcommittee on Consumer Affairs

My name is Paulette Lee. I reside at 11366 S.W. 214th Street, Miami, Florida 33170. On January 19, 1979, I rented a 25" RCA television set from T.V. World, Inc. I had seen an advertisement in "T.V. Facts." This is a small free booklet listing T.V. programs and has advertising in it and it is given away in my neighborhood. I picked it up at work. I saw an ad that said you could buy a T.V. by renting and I thought that would be a good way to buy one. I signed a contract for a 25" color T.V. and made payments of $20.28 a week for about a year. I know I paid over $1,000. By that time I thought I had paid enough and ought to be the owner. I called up the T.V. place to see how much more I had to pay. They told me they would have to figure it out before they could give me an answer. I made another payment or two, but then I stop making payments as they never called me and told me how much more I would have to pay to own the television. The T.V. people came to take the T.V. away, but I wouldn't give it up. Later the Sheriff came and took it away.

When I went to Legal Services, they told me that my contract would have required me to pay $2,109.12 for that television before I could own it. If I had known that when I saw the ad, I wouldn't have wanted it, because that's too much money for a television.

Paulette Lee
PAULETTE LEE

P22/K

Senator Hawkins. When you ordered the TV, you responded to an ad that you saw on television?

Miss Lee. Beg pardon?

Senator Hawkins. When you decided to order the television, it was in response to an ad on television?

Miss Lee. No. It was in a TV Facts magazine, a little free booklet that comes out in the neighborhood.

Senator Hawkins. Do you have a copy of the ad?

Miss Lee. Do we have one?

Senator Hawkins. Could you supply one for us?

Ms. Simmons. We have a similar ad. We are not sure if it was the exact one.

Senator Hawkins. When you ordered the TV by telephone from TV World, did they ask you to come in?

Miss Lee. No, ma'am. I called from work and the next day he came to my job.

Senator Hawkins. Where you worked?

Miss Lee. Where I worked, yes, ma'am.

Senator Hawkins. Did he bring a contract at that time?

Miss Lee. No. When he brought the TV to my house, that's when he brought the contract.

Senator Hawkins. Did they have a showroom? Have you ever been to their place of business?

Miss Lee. I've never been there before.

Senator Hawkins. So you're not aware if they do all their business over the telephone or not?

Miss Lee. He brought out some pictures of various TV sets and appliances when he came to my job and I picked out the TV I wanted.

Senator Hawkins. Did you read the contract before you signed it?

Miss Lee. Yes.

Senator Hawkins. Did you understand it?

Miss Lee. No.

PAYMENTS TOTALING $2,109 TO OWN A $637.95 TV SET

Senator Hawkins. So you were not at any time told that you would have to make a payment of $2,109.12 to own the TV?

Miss Lee. No.

Senator Hawkins. Would you have signed the contract if anybody had mentioned that settlement to you?

Miss Lee. No, ma'am.

Senator Hawkins. Before signing the contract, did anyone explain to you or did you realize personally that you could have acquired a television or brought the TV under an installment contract for $782?

Miss Lee. No.

Senator Hawkins. You weren't aware of that. If you had known that, would you have shopped around for a better bargain?

Miss Lee. Yes.

Senator Hawkins. Or are you so busy at your work that you don't have time to do that?

Miss Lee. No, it's not that. I thought that would be an easy way.

Senator Hawkins. So after your experience, would it have been helpful to you if there had been a Federal law that requires TV World and other appliance centers like that to disclose in their advertising and especially in their contract the total cost if you ever desired to own the TV?

Miss **Lee**. Yes; I think so.

Senator **Hawkins**. Thank you very much.

We'll hear from Ms. Simmons next and then we will ask questions of all three of you.

Ms. Simmons, welcome.

STATEMENT OF JANE SIMMONS, STAFF ATTORNEY, LEGAL SERVICES OF GREATER MIAMI, INC., MIAMI, FLA.

Ms. **Simmons**. Thank you, Madam Chairman.

My name is Jane Simmons and I am a staff attorney with Legal Services of Greater Miami. I have been representing clients in the consumer field, specializing in consumer representation, for the last 5 years. During this time we have had at least five cases in our office in which we have represented consumers who have had rental-purchase agreement problems.

We did some discovery on Miss Lee's case and we found out some interesting facts.

RENTAL-PURCHASE AGREEMENT PROBLEMS

Exhibit 1 is an ad that was produced by TV World and I think the emphasis is on buying. The large word is I think you can see from up there "Buy by renting," and in front of the television it says, "Rent me, I'm yours." "No credit needed" is also emphasized.

Exhibit 2 is another ad from this particular company that says, "Don't buy a TV; rent your own. No credit needed."

Exhibit 3 is attached to their radio announcement which says, "It's easy to remember TV World where you can buy by renting. No credit needed. Free service. Free delivery."

However, when Miss Lee signed her contract, there was very little mention of buying. It's entitled "This is a Rental Agreement Only." That's exhibit 4. Down at the bottom in very small print, the smallest used in the contract, it says, "In the event renter at his sole election renews this rental agreement for 104 successive 1-week terms, owner will transfer the property to renter." Of course, 104 weeks is 2 years and Miss Lee would have paid over $2,000 had she rented the television for that time.

On the back, exhibit 5, of her contract, is a "buy option" given to Miss Lee, and I believe this is what the text of your bill talks about, the buy-out provision; and in all the cases that we have worked with there has been a similar provision. In this case, the renter as an option may buy the property during the contract period. There is a base price given; in Miss Lee's case, $637.95, less one-half of the total amount of rent paid by the renter during the preceding 6 months.

So in each of these cases, there is a little formula to be followed. You would have to first compute what you paid in and then take 50 percent of that and subtract it from this $637 or whatever price you were given on the back of your contract.

I don't think there's any question that Miss Lee intended to be the owner of this television as the lessor has written in hand on the back of her contract, "Maintenance 3 years in parts from the date of the contract." So I think he must have known or had a good idea that Miss Lee intended to buy the television.

I think you have emphasized, Madam Chairman, that if Miss Lee had purchased this same television under Florida's Retail Installment Sales Act where there is an 18-percent limit on the interest, in a 1-year contract it would have been paid for and she would have paid $782 or almost $783 total payments. The TV World price during 1 year was $382 above the 18 percent allowable under Florida's Retail Installment Sales Act.

A similar case to Miss Lee's is that of Dorothy Spicer, another client who also rented from TV World. In her case the TV was a little less valuable, about $480. After she paid $645 she felt she had paid enough and refused to make further payments. Under her dealer's option, her buy-out option, she would have had to pay $956 to own a television at the 10-month period when she quit making payments. If she rented for the whole 104 weeks, she would have had to pay $1,460.16 to own this television.

Answers to our interrogatories showed that the television cost the dealer $258 and also that approximately 20 percent of his rental customers completed the 104-week term and became owners of the television.

Miss Mary Everett is another client we had that rented from Sights and Sounds TV. At the time the TV was replevined from Miss Everett, the lessor claimed the price was $627. Miss Everett had paid $1,400 by that time and if she had paid the 18-month rental which was necessary to own the TV, she would have paid $1,950.

The last two clients are current clients, Lillie Mae Williams and Dorothy Albertie, who are at present or were renting from Bond Television Leasing. These are the final contracts, 8 and 9 in the exhibits, and they do not have a final purchase available without a buyout. In this case, on these two contracts, a buyout only is available and the lessee has the option to purchase new equipment during the first year with 50 percent of the total amount paid in rental to apply toward the purchase price of $531.

In this case, both clients paid in over 1 year and were told orally—they alleged they were told orally that if they had paid for 18 months, they would become owners of the television. That is one of the facts in contention in the lawsuit.

One client did pay 18 months and did not become owner of the television, and the other one paid almost 18 months and tendered the remaining. If they had paid under their buyout option, they would have paid $784 approximately at the end of 1 year. Under the State's retail installment sales act, the television would probably have cost $685.

REQUIRING DISCLOSURES WOULD HELP LOWER PRICES

I believe these examples I have given demonstrate the necessity to extending the act to cover renting agreements. Requiring the disclosures would help lower unconscionable prices, I feel, and offer redress to a consumer if the act is violated.

Having had some experience litigating with Truth-in-Lending, I would also urge you to keep provision section 122(f) which, if there is to be a 1-year statute of limitations on affirmative actions in this case, I feel it essential to have this provision to be able to assert a violation by way of recoupment in an action to collect a debt. Four of our five cases, and I would say at least 80 percent of our cases where Truth-in-Lending is involved, arise after 1 year. We don't even see the client until 1 year has passed.

Thank you.

[Complete statement and exhibits follow:]

PRE-FILED TESTIMONY OF JANE SIMMONS BEFORE THE SUBCOMMITTEE ON CONSUMER AFFAIRS, SENATE COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS ON S. 1152, JULY 19, 1983

Honorable Paula Hawkins, Chairman
Subcommittee on Consumer Affairs

My name is Jane Simmons. I am a staff attorney employed by Legal Services of Greater Miami, Inc. located at 7900 N. W. 27th Avenue, Northside Shopping Center, 149 West Plaza, Suite 210, Miami, Florida 33147, Telephone (305) 693-6810. I have practiced law with Legal Services approximately five (5) years. During this time have I specialized in representing clients with consumer problems.

I recall five cases in our office with which I had some connection that concerned rental agreement problems. All these cases concerned televisions.

PAULETTE LEE

I would like to point out some interesting facts Legal Services discovered in doing discovery representing Paulette Lee. In response to our Request for Production, T.V. World produced copies of two advertisements. (See copies attached and marked Exhibits 1 and 2.) These ads seem directed to a low-income person. Both ads emphasize that no credit is needed, and the advertiser is encouraging a consumer to "buy." Paulette Lee's Exhibit 3 is a text from a radio announcement. Again, "buying" is an important part of the advertisement, and no credit is needed. Answers to Interrogatories in this case solicited the following information: The T.V. was purchased by T.V. World on 1/17/79 for $494.90. The lessor used a 7 year depreciation schedule, and at the time of the replevin of the television it was valued at $412.42 by the lessor. It was rented to another lessee after it was replevied. Production of Ms. Lee's ledger card showed she had paid $1,024. to the lessur on the television.

The contract that the lessor gave to Paulette Lee claims to be a "Rental Agreement Only," despite the advertised encouragement to "buy by renting." (See Exhibit 4) A small sentence located toward the bottom of the contract and printed in the smallest print that is used in the printing of the contract and without emphasis reads: "In the event Renter at his sole election renews this Rental Agreement for one hundred four successive one-week terms, Owner will transfer the property to Renter." The renter is not told that this amount would be $2,109.12. (Extending the depreciation used by the lessor, at the end of two years or 104 weeks, the value of the T.V. on his books would be $341.72.)

On the back of the contract given to Paulette Lee a "buy option" was stamped. (See Exhibit 5.) Under this option, the renter could purchase the T.V. for $627.95 less one half of the total amount of rent paid by the renter during the preceding six months. Ms. Lee could have purchased the T.V. for $648.09 after making the initial payment. After paying for six months Ms. Lee would have had to pay an additional $376.11 to become the owner of the T.V. Added to the $527.28 already paid in, the purchase price at that time would amount to $903.39. At the end of one year Ms. Lee would have paid in $1054.56. Under the formula she would have had to pay an additional $110.67 or a total of $1,165.23 to become the owner of the television.

If Ms. Lee had purchased this same television on a Retail Installment Contract with the Florida limit on interest at 18%, and taking the price of the television at $627.95, Ms. Lee would have been limited to $782.89 total of payments for a one year contract. T.V. World's price is $382.34 above the 18% allowable on a Retail Installment Contract during one year.

DOROTHY SPICER

A similar case to Paulette Lee's is that of Dorothy Spicer of 3804 Thomas Avenue, Miami, Florida. Mrs. Spicer also rented a television from T.V. World in 1969. In her case the television was valued by the dealer at $479.95. After paying $645.88 Mrs. Spicer felt she had paid enough and refused to make further payments. Under the dealer's buy option she would have had to pay $954 to own the television at approximately 13 months from the beginning of the agreement, which was when she stopped making payments. If she had rented for 104 weeks at $16.94 per month, she would have paid in $1,692.16 for this television set. Answers to Interrogatories showed it was purchased for $258. In these same interrogatories the lessor answered that approximately 20% of his rental customers completed the 104 week term and became owners of their televisions. (emphasis added.) A copy of Mrs. Spicer's contract is marked Exhibit 6.

MARY EVERETT

Mary Everett of 22120 S.W. 114th Avenue, Mi[illegible], [illegible]ida was sued by Sights and Sounds T.V. Rentals, Inc. At the time that the owner replevied the T.V. from Mrs. Everett, they claimed the value of the T.V. to be $627. Mrs. Mary Everett alleged that she had made payments on the T.V. totalling more than $1,400. If she had paid the 18 months rental that was necessary to own the T.V., she would have paid $1,950.00. A copy of the front of Mrs. Everett's contract is attached and marked Exhibit 7. The back (that seems to have contained a "buy out" option) is not available.

LILLIE MAE WILLIAMS
DOROTHY ALBERTIE

Two other cases presently in our office are Lillie Mae Williams v. Bond Television Leasing and Dorothy Albertie v. Bond Television Leasing. See Exhibits 8 and 9. In each of these cases the renters were given a buy option where they could apply during the first year 50% of the total amount paid in for rental toward a purchase price of $539.95. During the first year, Lillie Mae Williams paid in $488.86. If she had chosen to exercise her buy option at the end of the year she would have had to pay an additional $295.52 making the television cost $784.38. Under the State of Florida's Retail Installment Sales Act, the same television at the end of one year would have cost $685.74. The same figures apply to the contract of Ms. Dorothy Albertie.

These two contracts are not included in the definition provided in the proposed Act, as they provide for a "buy out" only. As all the cases that we have seen in our office contain this "buy out" feature, I feel it is necessary to include this in the definitions section of the Act and require disclosure. Otherwise, I would expect the lessors to simply switch to that option only and avoid disclosure altogether. I suggest that those dealers who offer a "buy out" feature be required to disclose at least one example of the total cost of the appliance when using that feature.

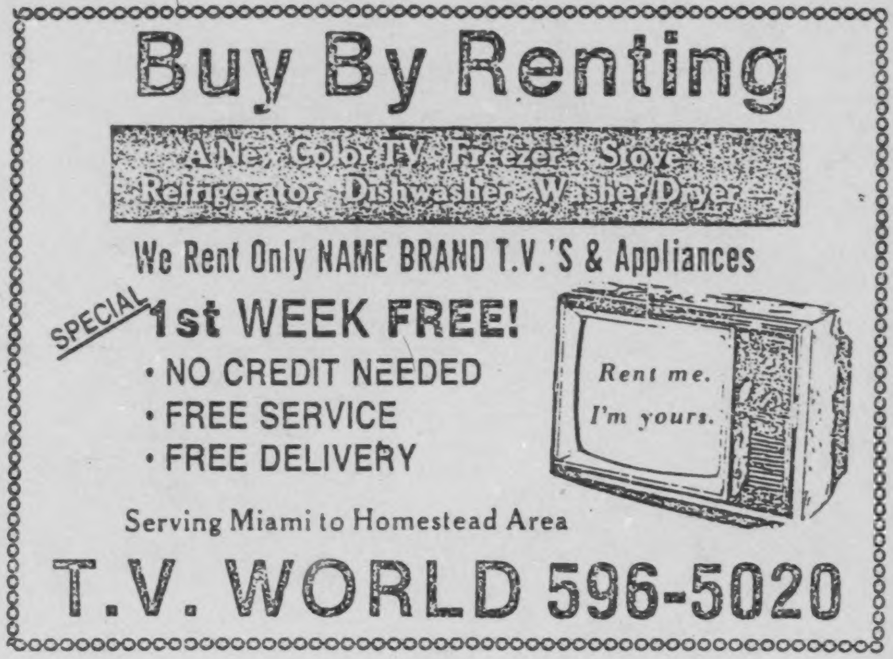
I believe the examples I have given demonstrate the necessity of extending the Act to cover Rental Agreement contracts. Requiring the disclosures should help lower unconscionable prices and offer redress to a consumer if the Act is violated.

If there is to be a one year statute of limitations for affirmative actions, I feel it is essential that the proposed Section 122(f) allowing the consumer to assert a violation by way of recoupment in an action to collect the debt be included. Four of our five cases have arisen after one year of rental.

Jane Simmons
JANE SIMMONS

P22/L

Feb. 1-7, 1981 EXHIBIT 1 TV FACTS



Buy By Renting

A New Color TV - Freezer - Stove
Refrigerator - Dishwasher - Washer/Dryer

We Rent Only NAME BRAND T.V.'S & Appliances

SPECIAL 1st WEEK FREE!

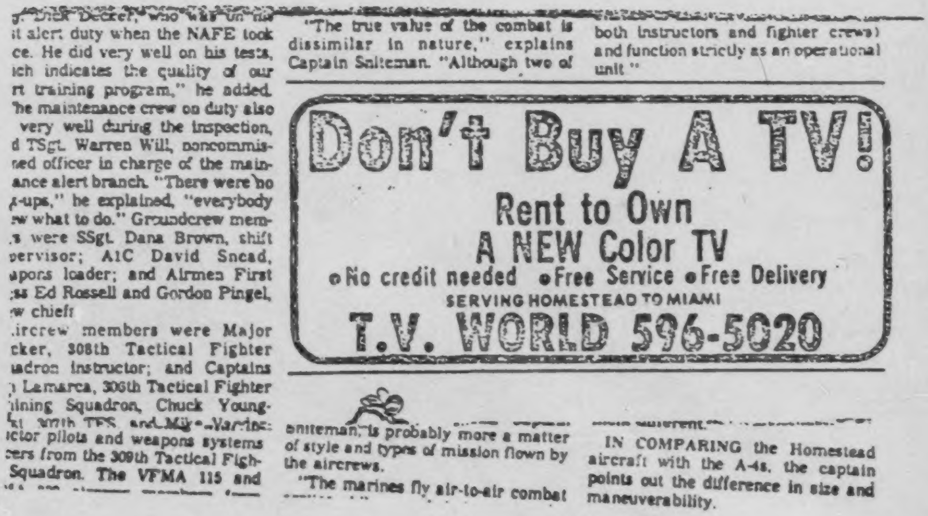
- NO CREDIT NEEDED
- FREE SERVICE
- FREE DELIVERY

Rent me.
I'm yours.

Serving Miami to Homestead Area

T.V. WORLD 596-5020

EXHIBIT 2



g. Dick Decker, who was on the
it alert duty when the NAFE took ce. He did very well on his tests, ich indicates the quality of our rt training program," he added.

he maintenance crew on duty also very well during the inspection, d TSgt. Warren Will, noncommissed officer in charge of the mainance alert branch. "There were no k-ups," he explained, "everybody w what to do." Groundcrew mem-s were SSgt. Dana Brown, shift pervisor; A1C David Snead, apons loader; and Airmen First ss Ed Rossell and Gordon Pingel, w chiefs

ircrew members were Major cker, 308th Tactical Fighter uadron instructor; and Captains Lamarca, 306th Tactical Fighter ining Squadron, Chuck Young-ki 307th TFS, and Mike Varin: ictor pilots and weapons systems cers from the 309th Tactical Figh- Squadron. The VFMA 115 and

"The true value of the combat is dissimilar in nature," explains Captain Saltemen. "Although two of

both instructors and fighter crews) and function strictly as an operational unit."

Don't Buy A TV!

Rent to Own
A NEW Color TV

• No credit needed • Free Service • Free Delivery

SERVING HOMESTEAD TO MIAMI

T.V. WORLD 596-5020

altemen, is probably more a matter of style and types of mission flown by the aircrews.

"The marines fly air-to-air combat

different.

IN COMPARING the Homestead aircraft with the A-4s, the captain points out the difference in size and maneuverability.

TEXT FROM WMBM - 15
ADVERTISEMENT FOR T.V. WORLD, INC.

"... You know, I am amazing, ah, you see I have the world's worst, the world's worst, "

- " Memory"

- " MEMORY, right! ; But there is one thing I always remembe and that, of course, is T.V. WORLD. Now I always remember T.V. WORLD because ah..."

- " I thought you said you always remember T.V. WORLD"

- " Well, I do, I did, but I don't remember why I remember them"

- " You are amazing allright!. It's easy to remember T.V. WORLD, where you can buy by renting. New color T.V.'s, freezers, stoves, refrigerators, washers and dryers. T.V. WORLD rents only name brand T.V.'s and appliances. Rent now! and get one week free. No credit needed. Free service, free delivery. Serving Miami to Homestead. And don't forget the number: 596-5020."

- " That's right! call T.V. WORLD today at ah.. ah.."

- " 596-5020"

EXHIBIT 3

596-5020
PHONE

FOR OFFICE USE ONLY
20.28

DATE [illegible]
RENTER Paulette Lee
RESIDENCE ADDRESS 11[illegible] Robinson St
APARTMENT [illegible]
MOVED TO [illegible]

ITEM 25" T.V. BRAND RCA.
MODEL GC6885 SERIAL 901-35 0807

Weekly Rental Rate If Paid On or Before Due Date $19.50+TAX 78¢
Optional Daily Rental Rates
1st Day $
2nd Day $
Each Day Thereafter $
1st Due Date MONDAY (Day of Week) – JAN. 29/79 (Date)
Maintenance Limit SEE BACK (Date)

THIS IS A RENTAL AGREEMENT ONLY

The undersigned, herein called "Renter", whether one or more, does jointly and severally hereby rent from the rental company, herein called "Owner", the above described personal property, herein called "Property", at the rental rates set forth above, payable weekly in advance for week-to-week terms beginning on the commencement date stated above, except as stated below.

THIS IS A WEEK-TO-WEEK OR DAY-TO-DAY RENTAL AGREEMENT ONLY

TITLE AND TERM: Title remains at all times in the Owner. The Renter receives use and possession of the property for successive one-week terms so long as weekly rental payments are made on or before the date due and renter complies fully with all agreements and conditions hereof and unless this agreement is terminated as provided herein. In the event renter fails to renew for a week-to-week term by payment of the weekly rental rate in advance on or before the date due and retains possession of the property, Renter agrees to rent said property on a day-to-day term at the optional daily rental rates set out above, payable in advance. Renter may elect to thereafter renew on a week-to-week basis on any weekly anniversary of the first due date above by making all required payments to said anniversary date and the payments for a one week term thereafter.

TERMINATION BY OWNER: This agreement shall at the option of the Owner and without notice terminate upon the failure of the Renter to make every rental payment required herein on or before the date due, or by breach by the Renter of any agreement, condition or representation, all of which are agreed to be material. Renter shall immediately return the property to owner in its present condition, fair wear or tear excepted, and Renter shall remain liable for all payments hereunder to the date of termination and for the performance of all agreements and conditions hereof.

LOCATION OF PROPERTY: Renter warrants and agrees that it will keep said property in its possession at the residence address above and will not remove said personal property from said address without agreement in writing executed by the owner. If renter moves said propertywithout securing prior agreement in writing from owner, this agreement shall be thereby breached, giving the owner the right of immediate possession and Renter shall be liable for prosecution under applicable state law.

DAMAGES: Renter is fully responsible for damages to or loss or destruction of said property from all causes whatever, including, but not limited to theft, vandalism, malicious mischief and mysterious disappearance, and agrees to indemnify the owner on the failure to return said property to the owner at the termination of this agreement.

ASSIGNMENT: This agreement may be sold, transferred and assigned by owner without restriction. Renter has no right to assign, sub-lease or transfer his rights herein without the written consent of the Owner.

MAINTENANCE AND TAXES: The owner does hereby agree to maintain the personal property in good working order and any and all maintenance or repairs to the property of the owner rented hereunder must be performed by the Owner and the Owner will not be responsible for costs of any repairs done at the request of the Renter by others. The Owner shall pay any personal property taxes on said property. Maintenance is not provided beyond the date specified above as "Maintenance Limit."

OWNER'S RIGHT TO ENTER AND TAKE POSSESSION: The Owner and its agents, upon the termination of this agreement, are specifically authorized to enter upon any premises where the property may be found and take possession of and remove the property without liability, and Owner and its agents are hereby released and discharged from any claim or cause of action in or relating to entry and taking possession and Renter agrees to indemnify owner and its agents for all costs, expenses, and damages occurring directly or indirectly from or related to taking possession and the removal of said property.

Renter has no right to sell, mortgage, pawn, pledge, encumber, or dispose of said property or to move said property from the residence address listed above. To do so is a breach of this agreement and Renter shall be liable under applicable State Law.

In the event Renter at his sole election renews this Rental Agreement for one hundred four successive one-week terms, Owner will transfer the property to Renter.

TIME IS OF THE ESSENCE OF THIS AGREEMENT

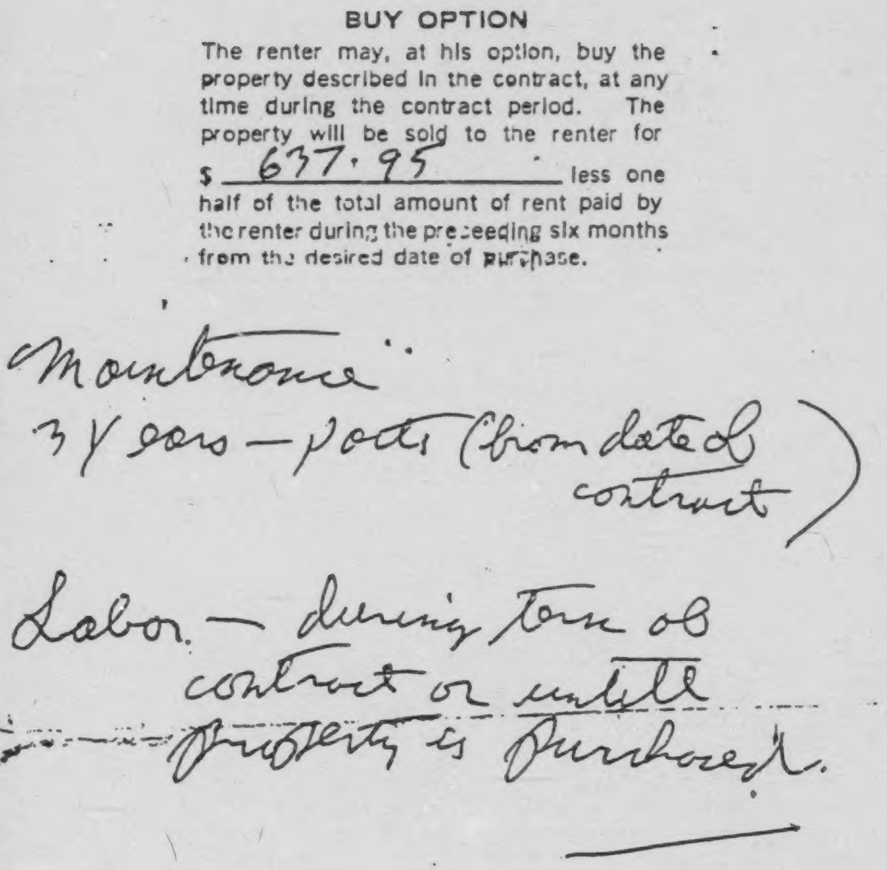
No oral statements or agreements shall be valid or binding on the parties hereto. This Rental Agreement may be modified, varied, altered or extended, or the agreements or conditions hereof waived only by agreement in writing executed by the Owner. Renter acknowledges receipt of said property in satisfactory operating condition. The property is not represented to be new property.

I HAVE READ AND UNDERSTAND THE ABOVE RENTAL AGREEMENT

Renter Paulette Lee
Renter
Witness

EXHIBIT 4

Front of Paulette Lee's Contract



BUY OPTION

The renter may, at his option, buy the property described in the contract, at any time during the contract period. The property will be sold to the renter for $ 637.95 less one half of the total amount of rent paid by the renter during the preceeding six months from the desired date of purchase.

Maintenance
3 years — parts (from date of contract)

Labor — during term of contract or until property is purchased.

EXHIBIT 5 Back of Paulette Lee's Contract

. WORLD [illegible] FLA. 33116	RENTER [illegible] RESIDENCE ADDRESS [illegible] THOMAS [illegible] APARTMENT [illegible]
	ITEM 19" T.V. PORT BRAND PHILCO MODEL C2903 SERIAL 040 2413
PHONE 596-5020	Weekly Rental Rate If Paid On or Before Due Date $ 14.04 Optional Daily Rental Rates 1st Day $ 2nd Day $ Each Day Thereafter $
FOR OFFICE USE ONLY 14.04 PER WEEK CHARGE 1.00 PER DAY/PAYMT.	1st Due Date MONDAY — SEPT [illegible] Day of Week / Date Maintenance Limit DURING CONTRACT Date

THIS IS A RENTAL AGREEMENT ONLY

The undersigned, herein called "Renter", whether one or more, does jointly and severally hereby rent om the rental company, herein called "Owner", the above described personal property, herein called roperty", at the rental rates set forth above, payable weekly in advance for week-to-week terms beginng on the commencement date stated above, except as stated below.

THIS IS A WEEK-TO-WEEK OR DAY-TO-DAY RENTAL AGREEMENT ONLY

TITLE AND TERM: Title remains at all times in the Owner. The Renter receives use and possession of e property for successive one-week terms so long as weekly rental payments are made on or before the te due and renter complies fully with all agreements and conditions hereof and unless this agreement is rminated as provided herein. In the event renter fails to renew for a week-to-week term by payment of e weekly rental rate in advance on or before the date due and retains possession of the property, Renter rees to rent said property on a day to day term at the optional daily rental rates set out above, payable advance. Renter may elect to thereafter renew on a week-to-week basis on any weekly anniversary of the st due date above by making all required payments to said anniversary date and the payments for a e week term thereafter.

TERMINATION BY OWNER: This agreement shall at the option of the Owner and without notice rminate upon the failure of the Renter to make every rental payment required herein on or before the ite due, or by breach by the Renter of any agreement, condition or representation, all of which are reed to be material. Renter shall immediately return the property to owner in its present condition, ir wear or tear excepted, and Renter shall remain liable for all payments hereunder to the date of termin-ion and for the performance of all agreements and conditions hereof.

LOCATION OF PROPERTY: Renter warrants and agrees that it will keep said property in its posses-on at the residence address above and will not remove said personal property from said address without reement in writing executed by the owner. If renter moves said propertywithout securing prior agree-ent in writing from owner, this agreement shall be thereby breached, giving the owner the right of im-ediate possession and Renter shall be liable for prosecution under applicable state law.

DAMAGES: Renter is fully responsible for damages to or loss or destruction of said property from l causes whatever, including, but not limited to theft, vandalism, malicious mischief and mysterious sappearance, and agrees to indemnify the owner on the failure to return said property to the owner at e termination of this agreement.

ASSIGNMENT: This agreement may be sold, transferred and assigned by owner without restriction. enter has no right to assign, sub-lease or transfer his rights herein without the written consent of the wner.

MAINTENANCE AND TAXES: The owner does hereby agree to maintain the personal property in od working order and any and all maintenance or repairs to the property of the owner rented here-nder must be performed by the Owner and the Owner will not be responsible for costs of any repairs ne at the request of the Renter by others. The Owner shall pay any personal property taxes on said operty. Maintenance is not provided beyond the date specified above as "Maintenance Limit."

OWNER'S RIGHT TO ENTER AND TAKE POSSESSION: The Owner and its agents, upon the termin-on of this agreement, are specifically authorized to enter upon any premises where the property may found and take possession of and remove the property without liability, and Owner and its agents e hereby released and discharged from any claim or cause of action in or relating to entry and taking ssession and Renter agrees to indemnify owner and its agents for all costs, expenses, and damages curring directly or indirectly from or related to taking possession and the removal of said property.

Renter has no right to sell, mortgage, pawn, pledge, encumber, or dispose of said property or to move d property from the residence address listed above. To do so is a breach of this agreement and Renter all be liable under applicable State Law.

the event Renter at his sole election renews this Rental Agreement for one hundred four successive e-week terms, Owner will transfer the property to Renter.

TIME IS OF THE ESSENCE OF THIS AGREEMENT

No oral statements or agreements shall be valid or binding on the parties hereto. This Rental Agree-ent may be modified, varied, altered or extended, or the agreements or conditions hereof waived only agreement in writing executed by the Owner. Renter acknowledges receipt of said property in satis-ctory operating condition. The property is not represented to be new property.

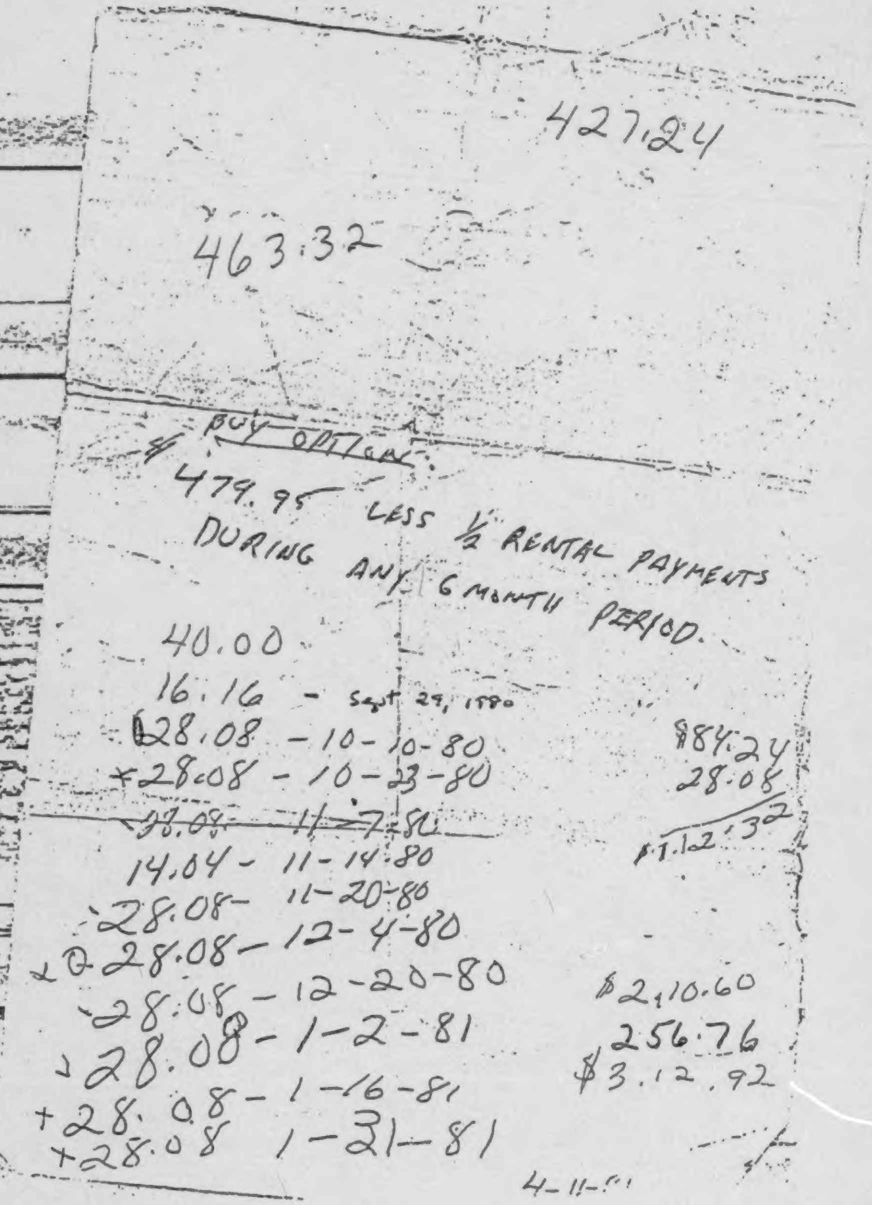
I HAVE READ AND UNDERSTAND THE ABOVE RENTAL AGREEMENT

enter Dorothy Spicer

enter

itness

EXHIBIT 6-A Front of Dorothy Spicer's Contract



427.24

463.32

~~Buy Option~~

479.95 LESS ½ RENTAL PAYMENTS DURING ANY 6 MONTH PERIOD.

40.00
16.16 - Sept 29, 1980
28.08 - 10-10-80
+28.08 - 10-23-80
~~28.08 - 11-7-80~~
14.04 - 11-14-80
28.08 - 11-20-80
28.08 - 12-4-80
28.08 - 12-20-80
28.08 - 1-2-81
28.08 - 1-16-81
+28.08 - 1-16-81
+28.08 1-21-81

$84.24
28.08
$1.12.32

$2,10.60
256.76
$3.12.92

4-11-81

EXHIBIT 6-B Back of Dorothy Spicer's Contract

EXHIBIT 7

RENTAL AGREEMENT WITH OPTION TO PURCHASE

[illegible] RENTAL COMPANY — 2/13 19 81

RENTER Everett Mary E.

[illegible] ADDRESS

RESIDENCE ADDRESS 22120 [illegible] 114 Ave

[illegible] PHONE

APARTMENT [illegible] PHONE [illegible]

Miami, FL 3315[illegible]

PHONE

ITEM C/Combo BRAND Keith

MODEL 685 SERIAL 936938824

ASSIGNED TO BORG WARNER ACCEPTANCE CORP.

Unit # 236

RENTAL RATE PER WEEK IF PAID ON OR BEFORE DUE DATE. (INCLUDES STATE AND LOCAL TAXES IF APPLICABLE) $ 25.00/95.00

IN HOME COLLECTION FEE $ 5.00 [illegible] 8.00

COMMENCEMENT DATE OF RENTAL TERM Fri — DAY OF WEEK 2/13/81 — DATE

RENTAL AGREEMENT WITH OPTION TO PURCHASE

THE UNDERSIGNED HEREIN CALLED "RENTER", WHETHER ONE OR MORE, DO JOINTLY AND SEVERALLY HEREBY RENT FROM THE RENTAL COMPANY, HEREIN CALLED "OWNER", THE ABOVE DESCRIBED PERSONAL PROPERTY, HEREIN CALLED "PROPERTY", AT THE RENTAL RATE SET FORTH ABOVE PAYABLE WEEKLY IN ADVANCE FOR A WEEK-TO-WEEK TERM BEGINNING ON THE COMMENCEMENT DATE STATED ABOVE.

THIS IS A WEEK-TO-WEEK RENTAL AGREEMENT WITH OPTION TO PURCHASE.

- TITLE: TITLE REMAINS AT ALL TIMES IN THE OWNER. THE RENTER RECEIVES USE AND POSSESSION OF THE PROPERTY FOR SUCCESSIVE ONE-WEEK TERMS SO LONG AS WEEKLY RENTAL PAYMENTS ARE MADE ON OR BEFORE THE DATE DUE AND RENTER COMPLIES FULLY WITH ALL AGREEMENTS AND CONDITIONS HEREOF AND UNLESS THIS AGREEMENT IS TERMINATED AS PROVIDED HEREIN.
- TERMINATION BY RENTER: RENTER AT ITS OPTION MAY AT ANY TIME TERMINATE THIS AGREEMENT BY RETURN OF THE PROPERTY TO OWNER IN ITS PRESENT CONDITION, FAIR WEAR AND TEAR EXCEPTED, AND BY PAYMENT OF ALL RENTAL PAYMENTS DUE ON OR DURING THE WEEK OF TERMINATION.

TERMINATION BY OWNER: THIS AGREEMENT SHALL AT THE OPTION OF THE OWNER AND WITHOUT NOTICE TERMINATE UPON THE FAILURE OF RENTER TO MAKE EVERY RENTAL PAYMENT REQUIRED HEREIN ON OR BEFORE THE DATE DUE, OR BY BREACH BY THE RENTER OF ANY AGREEMENT, CONDITION OR REPRESENTATION ALL OF WHICH ARE AGREED TO BE MATERIAL. ON TERMINATION, RENTER SHALL IMMEDIATELY RETURN THE PROPERTY TO OWNER IN ITS PRESENT CONDITION, FAIR WEAR AND TEAR EXCEPTED, AND RENTER SHALL REMAIN LIABLE FOR ALL PAYMENTS HEREUNDER TO THE DATE OF TERMINATION AND FOR THE PERFORMANCE OF ALL AGREEMENTS AND CONDITIONS HEREOF.

- LOCATION OF PROPERTY: RENTER WARRANTS AND AGREES THAT IT WILL KEEP SAID PROPERTY IN ITS POSSESSION AT THE RESIDENCE ADDRESS ABOVE AND WILL NOT REMOVE SAID PERSONAL PROPERTY FROM SAID ADDRESS WITHOUT AGREEMENT IN WRITING EXECUTED BY THE OWNER. IF RENTER MOVES SAID PROPERTY WITHOUT SECURING PRIOR AGREEMENT IN WRITING FROM OWNER, THIS AGREEMENT SHALL BE THEREBY BREACHED, GIVING THE OWNER THE RIGHT OF IMMEDIATE POSSESSION AND RENTER SHALL BE LIABLE FOR PROSECUTION UNDER APPLICABLE STATE LAWS.
- DAMAGES: RENTER IS FULLY RESPONSIBLE FOR THE LOSS, THEFT OR DESTRUCTION OF SAID PROPERTY FROM ALL CAUSES WHATEVER AND AGREES TO PAY TO THE OWNER THE FAIR MARKET VALUE OF THE PROPERTY IN SUCH EVENT. IN THE EVENT OF DAMAGE, AND/OR PARTIAL DESTRUCTION FROM ANY CAUSE WHATEVER, RENTER AGREES TO PAY TO THE OWNER A REASONABLE COST OF REPAIR TO SAID PROPERTY.
- ASSIGNMENT: THIS AGREEMENT MAY BE SOLD, TRANSFERRED AND ASSIGNED BY OWNER WITHOUT RESTRICTION. RENTER HAS NO RIGHT TO ASSIGN, SUBLEASE, OR TRANSFER HIS RIGHTS HEREIN WITHOUT THE WRITTEN CONSENT OF OWNER.
- MAINTENANCE: THE OWNER DOES HEREBY AGREE TO MAINTAIN THE PERSONAL PROPERTY IN GOOD WORKING ORDER AND ANY AND ALL MAINTENANCE OR REPAIRS TO THE PROPERTY OF THE OWNER RENTED HEREUNDER MUST BE PERFORMED BY THE OWNER AND THE OWNER WILL NOT BE RESPONSIBLE FOR COSTS OF ANY REPAIRS DONE AT THE REQUEST OF THE RENTER BY OTHERS.

OWNER'S RIGHT TO ENTER AND TAKE POSSESSION: THE OWNER AND ITS AGENTS UPON THE TERMINATION OF THIS AGREEMENT, ARE SPECIFICALLY AUTHORIZED TO ENTER UPON ANY PREMISES WHERE THE PROPERTY MAY BE FOUND AND TO TAKE POSSESSION OF AND REMOVE THE PROPERTY WITHOUT LIABILITY, AND OWNER AND ITS AGENTS ARE HEREBY RELEASED AND DISCHARGED FROM ANY CLAIM OR CAUSE OF ACTION IN OR RELATING TO ENTRY AND TAKING POSSESSION AND RENTER AGREES TO INDEMNIFY OWNER AND ITS AGENTS FOR ALL COSTS, EXPENSES, AND DAMAGES OCCURING DIRECTLY OR INDIRECTLY FROM OR RELATED TO THE TAKING POSSESSION AND THE REMOVAL OF SAID PROPERTY.

ATTOTNEY'S FEES: RENTER HEREBY AGREES TO PAY REASONABLE ATTORNEY'S FEES IN THE AMOUNT OF 30% IN THE EVENT THIS AGREEMENT SHOULD BECOME IN DEFAULT. IT IS UNDERSTOOD THAT THIS PERCENTAGE WILL BE BASED UPON THE JUDGMENT AMOUNT RENDERED BY A COURT OF COMPETENT JURISDICTION.

RENTER HAS NO RIGHT TO SELL, MORTGAGE, PAWN, PLEDGE, ENCUMBER, OR DISPOSE OF SAID PROPERTY OR TO MOVE SAID PROPERTY FROM THE RESIDENCE ADDRESS LISTED ABOVE: TO DO SO IS A BREACH OF THIS AGREEMENT AND RENTER SHALL BE LIABLE UNDER APPLICABLE STATE LAW.

TIME IS OF THE ESSENCE OF THIS AGREEMENT.

THIS RENTAL AGREEMENT MAY BE MODIFIED, VARIED, ALTERED, OR EXTENDED, OR THE AGREEMENTS OR CONDITIONS HEREOF WAIVED, ONLY BY AGREEMENT IN WRITING EXECUTED BY THE OWNER. RENTER ACKNOWLEDGES RECEIPT OF SAID PROPERTY IN SATISFACTORY OPERATING CONDITION. THIS PROPERTY IS NOT REPRESENTED TO BE NEW PROPERTY.

IN THE EVENT RENTER AT HIS SOLE ELECTION RENEWS THIS RENTAL AGREEMENT FOR 18 month SUCCESSIVE ONE-WEEK TERMS, OWNER WILL TRANSFER THE PROPERTY TO RENTER.

IN ORDER TO OBTAIN THE ABOVE DESCRIBED PROPERTY I SUBMIT THE FOLLOWING INFORMATION:

TYPE I.D. SHOWN Fla Driver Lic

FULL NAME ON I.D. Mary Ella Everett

ADDRESS SHOWN ON I.D. 22120 SW 114 Ave

EMPLOYMENT VERIFICATION

I HAVE READ AND UNDERSTOOD THE ABOVE AGREEMENT

Renter X Mary E. Everett

Renter

Witness Henry Rios

ORIGINAL

[illegible]
Front of Little Inn
Williams' Contract

Bond Television Leasing of Miami
725 N.E. 79th Street
Miami, Florida 33138
751-7637

LEASE AGREEMENT

Lease No 1170-1

AGREEMENT, Made this 9 day of July, 1981 between BOND TELEVISION LEASING (hereinafter called "Lessor") and Willie Mae Williams (hereinafter called "Lessee") WITNESSETH

EQUIPMENT 1 The Lessor does hereby lease to the Lessee, for installation and use upon the premises at 711 NW 3 Pl now occupied by Lessee, the following personal property (hereinafter called "Equipment"):

One Color Television Set Model No 19" CE Set No 545

TERM To have and to hold the same unto the Lessee from July 9, 1981 until Aug 1 1981, and from month to month thereafter, subject to termination as hereinafter provided.

II. The Lessee, in consideration of said lease, convenants and agrees with the Lessor as follows

INITIAL CHARGES (1) To pay an initial charge of $31.31 upon the execution of this agreement. It is agreed that this initial charge includes the first month's rental. It is understood that no part of this is a deposit and that none of it will be refunded at any time.

RENTAL (2) To pay as rent for said Equipment the sum of $39.95 per month. It is understood that the monthly rental payment is due and payable at the beginning of each lease month. The second month's rental will be 41.8 payable 8/1/81. The monthly rental charge includes sales tax of $1.60. In the event any governmental authority imposes additional taxes on such rental charge, the increase will be added to the monthly rental payment. A late charge of $3.00 will be added on all accounts 5 days past due. Upon termination of this lease, rental is payable to the end of the then current lease month.

TAXES (3) To pay all taxes and assessments on said equipment.

TRANSFERABILITY (4) The Equipment will not be sold, transferred or disposed of or be subjected to any unpaid charge, including taxes, or to any subsequent interest of a third person created or suffered by the lease voluntarily or involuntarily, unless the Lessor consents in advance in writing to such charge, transfer, disposition or subsequent interest.

MOVING SET (5) That, except upon the prior written consent of the Lessor, it will not (i) remove the said Equipment, or any part thereof from the above described premises, or (ii) assign this agreement.

FLORIDA STATUTES 811.021 defines grand larceny as being a property stolen which is of the value of $100.00 or more and a person "having in his possession, custody or control, . . . as a person authorized by agreement, or by competent authority, to hold or take such possession, custody or control, any . . . goods and chattels . . . , appropriates the same to his own use, or that of any other person other than the true owner or person entitled to the benefit thereof."

812.022 states proof that a person presented false identification, or identification not current with respect to name, address, place of employment, or other material aspects, in connection with the leasing of personal property, or failed to return leased property within 72 hours of the termination of the leasing agreement, unless satisfactorily explained, gives rise to an inference that such property was obtained or is now used with intent to commit theft.

I have read the above Statutes and understand that failure to return the equipment is a violation of 812.022.

X ______________________ Lessee

X ______________________ Lessee

LIENS (6) To keep said Equipment free and clear of all liens and encumbrances; to do and suffer nothing to be done which might operate to prejudice the title of the Lessor, to comply with all laws, ordinances and regulations applicable to such equipment, the use thereof and the premises on which the same is installed, and to indemnify and save Lessor harmless from all claims, suits and liabilities of every character whatsoever arising from the operation and use of said equipment.

LOSS OF DAMAGE (7) To assume full liability for any loss or damage to the equipment during the term of this lease for any reason whatsoever.

INSPECTION (8) To permit the Lessor and its representatives to inspect said equipment at reasonable times. Consent is hereby given by the undersigned Lessee for Lessor to enter upon any premises where said equipment is located and to remove same without being deemed guilty of a trespass.

[illegible] said equipment, including any and all [illegible] to

REPAIRS

III. Lessor at its own expense shall make all necessary repairs, maintenance [illegible] will not allow the Equipment to be misused, abused or allowed to deteriorate. Lessor [illegible] at any time to substitute similar equipment for the equipment identified above.

TERMINATION

IV. It is mutually understood and agreed that the Lessee may terminate [illegible] leased equipment to Bond Television Leasing during normal business hours [illegible] and agreed that this agreement may be terminated by Lessor for any reason by giving [illegible] notice. In the event of the failure of the Lessee to carry out any term or provision [illegible] Lessee is [illegible] provisions of the Bankruptcy Act, or if an assignment is made by the [illegible] a receiver of the assets or properties of the Lessee is appointed, then, in any such event, the Lessor may terminate the same without notice and immediately enter upon the premises of the Lessee and take possession of said Equipment, including replacements, with or without process of law.

DEFAULT

V. Default. Lessee agrees that should Lessee fail to pay any part of the rental or any other sum required to the Lessor within five (5) days after the due date thereof, or if default should be made in any of the other covenants, terms, or conditions on Lessee's part herein contained, Lessor shall have the right to take possession of said equipment, without demand or notice, wherever said equipment may be located (damages occasioned by such taking possession are hereby expressly waived by Lessee) and thereupon Lessee's right to the possession thereof shall terminate, and notwithstanding such, Lessee shall remain and be liable for the payment of the rent therefor and all such rent shall become due and payable forthwith. Lessee agrees to forthwith pay Lessor upon written demand any and all expenses including reasonable attorney's fees, incurred by Lessor in exercising or enforcing any of its rights hereunder. All remedies hereinbefore and hereafter conferred upon the Lessor shall be deemed cumulative and no one exclusive of the other, or of any other remedy conferred by law.

Default of any other existing lease between the parties hereto shall place this lease in default at the option of Lessor, even though payments on this lease may be current.

VI. Additional Agreements and Affirmations.

A. Lessee Agrees and Affirms.

TITLE

(1) No title or right in said property shall pass to Lessee except the lease rights herein expressly granted. Title shall remain in Lessor exclusively and Lessor shall also retain a security interest in all such property. Plates or other markings may be affixed to or placed on said property indicating that Lessor is the owner thereof and Lessee agrees not to remove the same. The equipment shall always be deemed personal property even though attached to realty. All replacements, equipment, repairs or accessories made to or placed in or upon said equipment, shall become a component part thereof and title thereto shall vest in Lessor.

Lessee will have the option to purchase new equipment during the 1st year with 50% of the total amount paid in rental to apply toward purchase price of $ [illegible]
The make and model will be of the kind Bond Television Leasing is purchasing at the time. The right to purchase equipment under the terms and provisions hereof shall not be construed as giving a right to purchase the equipment in the possession of Lessee.

DELINQUENCY

(2) Should Lessee fail to pay any part of the rental or any other sum within five (5) days after the due date Lessee shall pay to Lessor interest on such delinquent payment from the expiration of said five (5) days until paid at the rate of ten percent (10%) per annum, or the maximum legal rate of interest allowable. Prepaid rentals, if any, may be applied to balance due on lease if lease becomes delinquent. If rental payment is not received by Bond Television by the last day of the month, lease is automatically cancelled.

NON-WAIVER

(3) Lessor's failure at any time to require strict performance by Lessee of any of the provisions hereof shall not waive or diminish Lessor's right thereafter to demand strict compliance therewith or with any other provisions. Waiver of any default shall not waive any other default.

B. Mutual Agreements.

NO WARRANTIES

(1) THERE ARE NO EXPRESS WARRANTIES UNLESS THEY APPEAR IN WRITING SIGNED BY THE LESSOR AND THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IN CONNECTION WITH THE LEASE OF THE EQUIPMENT.

PERFORMANCE

(2) Time is of the essence in this lease agreement. This instrument consitutues the entire agreement between Lessor and Lessee. In the event that any clause or part of this lease agreement is determined to be invalid and/or illegal, it shall have no effect on the remaining clauses and parts of said lease agreement which shall remain in full force and effect.

CO-MAKERS

(3) It is hereby agreed that all persons who sign Schedule B, which may be attached hereto and is expressly made a part of and incorporated into this agreement, shall be co-makers of the lease with Lessee. Such co-makers shall be jointly and severally liable with the Lessee on all obligations. It shall not be necessary for Lessor to exhaust its remedies against the Lessee before it can go against to co-makers for liabilities incurred by the Lessee. A good and sufficient consideration runs to these co-makers as they shall be deemed to be interested in the success and continued operations of Lessee. An additional consideration exists in that Lessor would not have agreed to this lease without the existence of liability on the part of the co-makers.

UCC TERMS

(4) "Lessor" and "Lessee" as used in the lease shall mean SECURED PARTY and DEBTOR respectively, as these terms are used under the Uniform Commercial Code.

(5) Blank spaces may be filled in by Lessor at a later date if dates and information are not available at the time of signing.

IN WITNESSES WHEREOF, the parties have executed this agreement this the 9th
day of July, 1981, at Miami, FLA

X ______________________ (SEAL)
(Lessee)

EXHIBIT 8-B
Back of Lillie Mae Williams' Contract

X ______________________
Address

Witness ______________________

Address ______________________

Witness ______________________

Address ______________________

______________________ (SEAL)
(Lessee)

______________________ (SEAL)
(Co-Maker)

BOND TELEVISION LEASING

By ______________________

Bond Television Leasing of Miami

725 N.E. 79th Street
Miami, Florida 33138
751-7637

EXHIBIT
Front of [illegible]
Contract

LEASE AGREEMENT

11121

AGREEMENT, Made this 27 day of June 19 81 between BOND TELEVISION LEASING (hereinafter called "Lessor"), and [illegible] Dooley (hereinafter called "Lessee"), WITNESSETH:

EQUIPMENT I. The Lessor does hereby lease to the Lessee for installation and use upon the premises of 1177 NW 62 St now occupied by Lessee, the following personal property (hereinafter called "Equipment"):

One Color Television Set. Model No. 19" C.T. Set No. 440

TERM To have and to hold the same unto the Lessee from June 27, 19 81 until July 1 19 81, and from month to month thereafter, subject to termination as hereinafter provided.

II. The Lessee, in consideration of said lease, convenants and agrees with the Lessor as follows:

INITIAL CHARGES (1) To pay an initial charge of $ 53 upon the execution of this agreement. It is agreed that this initial charge includes the first month's rental. It is understood that no part of this is a deposit and that none of it will be refunded at any time.

RENTAL (2) To pay as rent for said Equipment the sum of $ 39.85 per month. It is understood that the monthly rental payment is due and payable at the beginning of each lease month. The second month's rental will be 41.55 payable 7/1/81. The monthly rental charge includes sales tax of $ 1.60. In the event any governmental authority imposes additional taxes on such rental charge, the increase will be added to the monthly rental payment. A late charge of $3.00 will be added on all accounts 5 days past due. Upon termination of this lease, rental is payable to the end of the then current lease month.

TAXES (3) To pay all taxes and assessments on said equipment.

TRANSFERABILITY (4) The Equipment will not be sold, transferred or disposed of or be subjected to any unpaid charge, including taxes, or to any subsequent interest of a third person created or suffered by the lease voluntarily or involuntarily, unless the Lessor consents in advance in writing to such charge, transfer, disposition or subsequent interest.

MOVING SET (5) That, except upon the prior written consent of the Lessor, it will not (i) remove the said Equipment, or any part thereof from the above described premises, or (ii) assign this agreement.

FLORIDA STATUTES 811.021 defines grand larceny as being a property stolen which is of the value of $100.00 or more and a person "having in his possession, custody or control, . . . as a person authorized by agreement, or by competent authority, to hold or take such possession, custody or control, any . . . goods and chattels . . . , appropriates the same to his own use, or that of any other person other than the true owner or person entitled to the benefit thereof."

812.022 states proof that a person presented false identification, or identification not current with respect to name, address, place of employment, or other material aspects, in connection with the leasing of personal property, or failed to return leased property within 72 hours of the termination of the leasing agreement, unless satisfactorily explained, gives rise to an inference that such property was obtained or is now used with intent to commit theft.

I have read the above Statutes and understand that failure to return the equipment is a violation of 812.022.

X ______________________ Lessee

X ______________________ Lessee

LIENS (6) To keep said Equipment free and clear of all liens and encumbrances; to do and suffer nothing to be done which might operate to prejudice the title of the Lessor, to comply with all laws, ordinances and regulations applicable to such equipment, the use thereof and the premises on which the same is installed, and to indemnify and save Lessor harmless from all claims, suits and liabilities of every character whatsoever arising from the operation and use of said equipment.

LOSS OR DAMAGE (7) To assume full liability for any loss or damage to the equipment during the term of this lease for any reason whatsoever.

INSPECTION (8) To permit the Lessor and its representatives to inspect said equipment at reasonable times. Consent is hereby given by the undersigned Lessee for Lessor to enter upon any premises where said equipment is located and to remove same without being deemed guilty of a trespass.

[illegible] (9) Upon termination of this agreement to return said equipment, including any and all replacements to [illegible] at any time [illegible] substitute similar equipment for the equipment identified above.

TERMINATION

IV. It is mutually understood and agreed that the Lessee may terminate this agreement by returning the leased equipment to Bond Television Leasing during normal business hours. It is also mutually understood and agreed that this agreement may be terminated by Lessor for any reason by giving 30 days written notice. In the event of the failure of the Lessee to carry out any term or provision of this lease, or in the event the Lessee is adjudicated bankrupt, or if a petition is filed for the reorganization of the Lessee under the provisions of the Bankruptcy Act, or if an assignment is made by the Lessee for the benefit of creditors, or if a receiver of the assets or properties of the Lessee is appointed, then, in any such event, the Lessor may terminate the same without notice and immediately enter upon the premises of the Lessee and take possession of said equipment, including replacements, with or without process of law.

DEFAULT

V. Default. Lessee agrees that should Lessee fail to pay any part of the rental or any other sum required to the Lessor within five (5) days after the due date thereof, or if default should be made in any of the other covenants, terms, or conditions on Lessee's part herein contained, Lessor shall have the right to take possession of said equipment, without demand or notice, wherever said equipment may be located (damages occasioned by such taking possession are hereby expressly waived by Lessee), and thereupon Lessee's right to the possession thereof shall terminate, and notwithstanding such, Lessee shall remain and be liable for the payment of the rent therefor and all such rent shall become due and payable forthwith. Lessee agrees to forthwith pay Lessor upon written demand any and all expenses including reasonable attorney's fees incurred by Lessor in exercising or enforcing any of its rights hereunder. All remedies hereinbefore and hereafter conferred upon the Lessor shall be deemed cumulative and no one exclusive of the other, or of any other remedy conferred by law.

Default of any other existing lease between the parties hereto shall place this lease in default at the option of Lessor, even though payments on this lease may be current.

VI. Additional Agreements and Affirmations.

A. Lessee Agrees and Affirms.

TITLE

(1) No title or right in said property shall pass to Lessee except the lease rights herein expressly granted. Title shall remain in Lessor exclusively and Lessor shall also retain a security interest in all such property. Plates or other markings may be affixed to or placed on said property indicating that Lessor is the owner thereof and Lessee agrees not to remove the same. The equipment shall always be deemed personal property even though attached to realty. All replacements, equipment, repairs or accessories made to or placed in or upon said equipment shall become a component part thereof and title thereto shall vest in Lessor.

Lessee will have the option to purchase new equipment during the 1st year with 50% of the total amount paid in rental to apply toward purchase price of $ 531.95
The make and model will be of the kind Bond Television Leasing is purchasing at the time. The right to purchase equipment under the terms and provisions hereof shall not be construed as giving a right to purchase the equipment in the possession of Lessee.

DELINQUENCY

(2) Should Lessee fail to pay any part of the rental or any other sum within five (5) days after the due date, Lessee shall pay to Lessor interest on such delinquent payment from the expiration of said five (5) days until paid at the rate of ten percent (10%) per annum, or the maximum legal rate of interest allowable. Prepaid rentals, if any, may be applied to balance due on lease if lease becomes delinquent. If rental payment is not received by Bond Television by the last day of the month, lease is automatically cancelled.

NON-WAIVER

(3) Lessor's failure at any time to require strict performance by Lessee of any of the provisions hereof shall not waive or diminish Lessor's right thereafter to demand strict compliance therewith or with any other provisions. Waiver of any default shall not waive any other default.

B. Mutual Agreements.

NO WARRANTIES

(1) THERE ARE NO EXPRESS WARRANTIES UNLESS THEY APPEAR IN WRITING SIGNED BY THE LESSOR AND THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IN CONNECTION WITH THE LEASE OF THE EQUIPMENT.

PERFORMANCE

(2) Time is of the essence in this lease agreement. This instrument consitutues the entire agreement between Lessor and Lessee. In the event that any clause or part of this lease agreement is determined to be invalid and/or illegal, it shall have no effect on the remaining clauses and parts of said lease agreement which shall remain in full force and effect.

CO-MAKERS

(3) It is hereby agreed that all persons who sign Schedule B, which may be attached hereto and is expressly made a part of and incorporated into this agreement, shall be co-makers of the lease with Lessee. Such co-makers shall be jointly and severally liable with the Lessee on all obligations. It shall not be necessary for Lessor to exhaust its remedies against the Lessee before it can go against to co-makers for liabilities incurred by the Lessee. A good and sufficient consideration runs to these co-makers as they shall be deemed to be interested in the success and continued operations of Lessee. An additional consideration exists in that Lessor would not have agreed to this lease without the existence of liability on the part of the co-makers.

UCC TERMS

(4) "Lessor" and "Lessee" as used in the lease shall mean SECURED PARTY and DEBTOR respectively, as these terms are used under the Uniform Commercial Code.

(5) Blank spaces may be filled in by Lessor at a later date if dates and information are not available at the time of signing.

IN WITNESSES WHEREOF, the parties have executed this agreement this the 22nd
day of June, 19 81 at Miami, Fla

X ______________________ (SEAL)
(Lessee)

X ______________________
Address

Witness ______________________

Address ______________________

Witness ______________________

Address ______________________

______________________ (SEAL)
(Lessee)

______________________ (SEAL)
(Co-Maker)

BOND TELEVISION LEASING
By ______________________
(Lessor)

EXHIBIT 9-B
Back of Dorothy Albertie's
Contract

Senator HAWKINS. Thank you so much. You do a great job in Miami and I'm proud of that department.

Getting back to a question I asked Miss Lee, are you aware, Ms. Simmons, whether TV World has a showroom? Miss Lee said she was unaware of any.

Ms. SIMMONS. I don't know. I'm sure they have a place of business where there are the televisions, but I have never been there.

Senator HAWKINS. The cases you talked about and the exhibits you gave us concerned the rental of televisions. Are you aware of similar leases in rental furniture?

Ms. SIMMONS. For some reason, we have never had any cases on that that are extreme. The problems we have on rental furniture, are people who change their mind and they can't get the deposit back. We have had a number of those, but none where it went any length of time.

ESSENTIAL FOR CONSUMER TO BE ALLOWED TO COLLECT DEBT

Senator HAWKINS. You recommend that if there is to be 1-year statute of limitations for affirmative action, it's essential that the consumer be allowed to assert a violation by way of recoupment in an action to collect the debt. In layman's language, please explain why you think that's necessary.

Ms. SIMMONS. Well, because this is one advantage that sometimes the consumer gets in the contract to use as a defense, a violation of the act which will click in the act's penalty or the civil penalty involved. It will give the consumer some type of redress in an action where there might not be a lot. We've used this in retail installment contracts as a defense and no one is allowed after the 1 year to bring affirmative action that stands alone, and not only that, in Florida to bring it as a counterclaim after 1 year. It still probably can be asserted as a recoupment or setoff and, of course, in Truth-in-Lending, it's up to a $1,000 penalty, so that's quite helpful as a defense in the small-installment contract.

Senator HAWKINS. In your opinion, wouldn't low-income consumers be better off with straight credit sales than under these lease-to-buy contracts?

Ms. SIMMONS. Not necessarily. Quite often, we have a situation where a consumer will lose a job and there's no extra money, there's no savings account to tide them over until they find another job, so in some cases they might prefer a rental agreement that they would not be obligated for the total of payments that they would be obligated to make under a retail installment contract. It's an alternative financing method that might be valuable to some.

Senator HAWKINS. I have additional questions for all of you, but I'd like to turn to Senator Dodd who has joined us and see if he has a statement. I entered his questions for Governor Teeters in the record.

Senator DODD. Thank you. I don't have an opening statement other than to commend you, Madam Chairman, for these hearings to probe the question. It's interesting in a sense because I gather these obviously are misleading ads. I was shocked to see there was even a Connecticut company that has something less than an honest advertisement with regard to these rental agreements with the option to buy.

Can we go right into the questioning here?

Senator **Hawkins**. Surely.

Senator **Dodd**. Well, if I can, Ms. Azzata, I wonder if you might share with us the question that I sort of have in these matters involving Federal and State areas. I realize there can be conflicting laws in 50 different States, but a legitimate question arises as to whether or not these are matters that ought to be left properly within the jurisdiction of States or whether Federal laws are adequate if properly enforced to pursue those who would be guilty of violating the law.

You have the FTC Act and State "little FTC" acts that cover an awful lot of these and, of course, most States have fraud statutes on the books. There may be some exceptions—I'm not knowledgeable about all of them, obviously—but I know in my own State we do have fraud statutes and, as I read the Connecticut case cited here, it's a pretty blatant case, it seems to me, based on what's been presented. There may be extraneous evidence that's not included that minimizes the possibility of prosecution, but could you tell me why you believe—and then I'd ask you, Ms. Simmons, as well the same question—why it would not make more sense to insist upon enforcement of existing regulations, be they at the Federal level of the FTC or the State fraud statutes, as a way of pursuing this, and what makes you think because we pass this particular piece of legislation there's going to be any greater compliance with the law or there's going to be any greater enforcement of the law?

Ms. **Azzata**. I think it's very important to remember what Governor Teeters said, that this is a statute of disclosure and doesn't inherently prevent fraud or misrepresentation.

CONSUMER WILL BE ABLE TO JUDGE BETWEEN GOOD AND BAD BARGAIN

What the hope is is that this type of disclosure, if given to a consumer before a transaction is even begun, would help the consumer to judge between a good and a bad bargain.

I think the parallel between the early days of the Truth-in-Lending law and this statute are very clear. Congress passed the Truth-in-Lending law with the purpose of allowing credit shopping. It was very common at that time for credit advertisers to advertise low monthly payments, low interest rates, without ever disclosing what the total of payments were.

It seems to me that in this case, many of these clients' rentals seem to be a clear attempt to evade the Truth-in-Lending Act, which is an existing act, but because of the existing Consumer Leasing Act, many of these leases slip through the cracks. For leases that are less than 4 months in duration, whether they're called week-to-week or month-to-month, both the Federal Reserve Board and many court cases have indicated that these rental agreements are not covered by the Consumer Leasing Act and many courts have also agreed that they're not covered by the Truth-in-Lending Act.

Misrepresentation and fraud statutes on the State level would certainly apply to these cases once the problem has already occurred. My approach would lean more to preventing the type of problem before it happens.

Senator DODD. Do you have anything to add to that, Ms. Simmons?

Ms. SIMMONS. No; I agree on that. I think it's a little harder to litigate under the Deceptive Trade Act, at least in Florida. There's a pretty strict standard for fraud and I wouldn't say that these are outright fraudulent contracts, particularly if a person wanted to rent a television for 2 or 3 weeks. There's nothing fraudulent about that. They got what they paid for.

However, what we find so very deceptive is the advertising that is definitely leading toward buying, and that the consumer is led into buying and that the purchase price is so much at variance with the State's Retail Installment Sales Act.

The best thing that could happen for a consumer would be that when the threshold is reached of the State's Installment Sales Act, then you own the television if you choose to rent that long.

Senator DODD. And the basic point of the bill, as I understand it—and correct me if I'm wrong—is that if it's anything less than 4 months it would fall under this?

Mr. ABSHIRE. Not under the new section, Senator. That's under the old section. The Consumer Leasing Act was over 4 months. Under the rent-to-buy section there is no cap.

Senator DODD. There is no cap at all. You run into this problem, you know; you get the weekend lease kind of thing, where you get into very involved, long disclosure statements, that may not be entirely necessary. Is that your opinion, as well, that you run into that possible conflict?

Ms. AZZATA. In my experience, the clients that I have seen were under contracts in about 25 States and would not have been the weekend-type of problem. Clearly, it's a situation where people are trying to find an alternative to credit. Whether they are justified in thinking they're bad credit risks or not, they assume they need to find an alternative.

Senator DODD. Miss Lee, I think Senator Hawkins asked this question of you, but it's your testimony that you would not have rented the TV?

Miss LEE. Yes, sir.

Senator DODD. You would not have done that at all? Would you have considered going to other resources to borrow money?

Miss LEE. Yes. I probably would have and could have gotten it if I had known it was going to cost that much, and then after I called them and asked them how much more I had to pay, I probably would have continued making my payments rather than lose my money in the TV both. He just refused to tell me how much more. He told me that he would have to figure it out and let me know.

Senator DODD. You can tell me you don't want to answer this question and you would be very right to do so, but do you believe you would have qualified for credit at the time if you had gone to a normal credit union to apply for a loan?

Miss LEE. Yes.

Senator DODD. My last point relates to this package of advertisements we have here. The third one contains a text from WMBM. I guess it was a radio ad, and I gather, in Florida, as well as TV World. The trigger line is, you can buy by renting. That's the line that you have that creates the problem. The rest of the ad is fairly straightforward as an advertisement. It's a way of promoting business.

How would you have rewritten that line in effect? Let's assume you could buy by renting and then I presume the renter would have an obligation to exercise that option and there would be a disclosure statement in the contract. Would you change that in any way?

Ms. SIMMONS. Well, certainly at the point where the consumer came to buy by renting, I believe that the disclosures that the Federal Reserve Board has recommended would be very helpful. Certainly the total payments is a very essential item. We have two clients that are buyouts only that would not be covered under the present definition of the act. The other contracts that all have this option with the formula, I think in that case, the lessor should be required to demonstrate at least one example of how the formula would work—if you paid in 6 months, your TV would cost x number of dollars.

Senator DODD. Let me ask a last question of Ms. Azzata. Has there been any indication from the various States' attorneys general as to their feeling about this kind of Federal law; whether or not it would be of assistance to them?

LEGISLATION TO MAKE APPLIANCE RENTALS AS CREDIT SALES

Ms. AZZATA. I think in many cases, on the States that we've worked with—Maine, North Carolina and Michigan—I believe they are all considering legislation to make appliance rentals actually defined as credit sales. The Bureau of Consumer Protection in Maine has been very helpful and very interested in having more regulation.

I think that perhaps in some States it's considered almost an insult as a way to get around the State usury requirements which have been very carefully thought out by changing the terms of what you call a transaction, and I think there's a great level of interest.

Senator DODD. But your conclusion is that this proposed legislation would be generally supported by the States?

Ms. AZZATA. I think so; yes.

Senator DODD. Thank you, Madam Chairman.

Senator HAWKINS. Senator Gorton.

Senator GORTON. Ms. Azzata, I'm looking at the summary of your recommendations on the last couple pages and particularly the fifth and sixth on page 23. In connection with No. 5, if you're to require a disclosure of fair market value at the time of the rental, what would the fair market value be? How would it be defined, in your view?

Ms. AZZATA. I think there are numerous ways to do that. I believe Ms. Simmons said in the case she had been handling, the purchase price that the lessor paid for it. If it had been previously rented, I'm sure there's a——

Senator GORTON. The purchase price that the lessor paid for a new television wouldn't be its fair market value, would it?

Ms. AZZATA. I'm saying that's an alternative as a starting point and then adding a fair profit figure. I think that certainly adding in what maximum finance charge would be allowable in the State would be one way of approaching that. Certainly, for inventory purposes, the lessor keeps records of what they have paid. We've heard from some lessors who insisted they don't know what the property is worth, and I find that hard to believe.

Senator GORTON. Have you submitted with your testimony a proposed statutory definition? Would you leave that up to the Federal Reserve Board? How would you do it?

Ms. AZZATA. We haven't determined that, but I certainly would be willing to put effort into trying to do that.

Senator GORTON. Second, on No. 6, which is with relation to advertising, your recommendation is that the lessor should be required to state the total of payments and whether the property is new or used. But in advertisements, even like the ones we've shown here, presumably that renter has literally dozens of different models available, does it not? Do you mean to say that every advertisement should list the ranges of costs and rental payments for every television set, for example, which it has in stock?

Ms. AZZATA. I think that there are pretty standard ranges of sets that are rented to our clients. Certainly the two Connecticut cases I have seen have been almost identical for payments in the transaction, and most of the cases I have seen usually ranged from $15 to $20 a week for payments for a TV. So I think if an example were given that included a fairly standard price, say $20 a week for a television set, the total payments to disclose would be $1,500 in some of our cases.

Senator GORTON. You mean you're telling me that you don't think there would be a very large number of total of payments and monthly rental charges depending on what kind of television you were purchasing?

Ms. AZZATA. I think there are many possibilities, but I think the only way to reasonably do that is to take one example.

Senator GORTON. Thank you.

Senator HAWKINS. I have some questions for this panel.

If Congress does not promptly pass legislation to cover rent-to-own arrangements, what developments do you see in the marketplace?

Ms. AZZATA. My answer is simply that I would see more of the same and probably more of these cases than we're seeing now.

LEASE-TO-BUY CONTRACTS FINDING LOOPHOLES

Senator HAWKINS. And we've established that the lease-to-buy contracts are coming under loopholes in the State usury statutes and the Federal Truth-in-Lending statute, and therefore it is necessary, as Governor Teeters testified.

Are there any additional disclosures that you would recommend, either of you?

Ms. AZZATA. I think the six recommendations that we presented in the testimony certainly would be a very adequate base for disclosure.

Senator HAWKINS. In your opinion, should we carve out an exemption for the casual rentals such as Senator Dodd mentioned, such as beach or vacation rentals that are clearly rentals?

Ms. AZZATA. I don't have an opinion on that. That hasn't happened with my clients.

Senator HAWKINS. I gathered from the testimony that we had today many of the sales are done by the telephone. Senator Gorton has mentioned that you have many models to choose from but Miss Lee said they were pictures. Were you told if they would all be new?

Miss LEE. No; I wasn't, but mine was new. It came in a box.

Senator HAWKINS. So there is the loophole there that it could be a used TV.

Miss LEE. I don't think it was.

Senator HAWKINS. Not yours, but it could be.

Miss LEE. Yes.

Senator HAWKINS. There could be misrepresentation if it's done orally?

Miss LEE. Yes.

Senator HAWKINS. Is there anything any of you would like to tell us? I would like to thank Miss Lee for taking a day off from work to come here today and tell us her problem and help us with this bill, and all of you, of course. Is there anything any of you would like to say in conclusion before we dismiss this panel?

Ms. SIMMONS. No; thank you for having us.

Senator HAWKINS. Thank you so much.

Our next panel consists of persons representing clients in the furniture and appliance rental business. We'd like to welcome this panel today and I understand some of you, maybe all of you, are supporting some form of disclosure legislation at the Federal level, which is refreshing. I commend you for working with my staff and for your progressive attitude. It's my hope that we can all work together with groups representing the various interests here to frame final legislation that helps the consumers. Everybody I've ever met in my life is a consumer. I don't understand that it's a separate group out there. I think we're all consumers. I want to extend a special welcome to one member of the panel, Mr. Bill Ogle, who's president of Champion TV & Appliance Rentals of Daytona, Fla. I appreciate you coming here to help in our effort to frame some constructive legislation. Mr. Choate, of the Association of Progressive Rental Organizations, will be our first witness.

STATEMENT OF J. SAMUEL CHOATE, JR., ATTORNEY, REPRESENTING ASSOCIATION OF PROGRESSIVE RENTAL ORGANIZATIONS, AUSTIN, TEX., ACCOMPANIED BY BILL OGLE, CHAMPION TV & APPLIANCE RENTALS, SOUTH DAYTONA, FLA.

Mr. CHOATE. Thank you, Madam Chairman.

My name is Sam Choate and I'm from Augusta, Ga., and I'm representing the Association of Progressive Rental Organizations today, which is based in Austin, Tex. As the chairman mentioned, I'm accompanied by Bill Ogle of South Daytona, Fla. He is the president of Champion TV & Appliance Rentals and he owns 18 stores in southern Florida.

My testimony has been submitted for the record, so I will briefly summarize what I think are the salient points and then answer any questions that any members of the committee might have.

I think it is important for this committee to understand that the progressive rental dealers in this country do not agree, as Senator Hawkins asked Governor Teeters concerning the income levels of our customers, with the information that the average renter has an income in excess of $25,000. Rather, we would agree with the testimony of Governor Teeters that it depends on the neighborhood in which the rental enterprise happens to be located. If it's a lower-income neighborhood, then the customer would be lower income. Our demographics show that there are people who subscribe to the progressive rental approach for the use of products and services at all income levels.

OBLIGATION TO TERMINATE AT ANY TIME

I think perhaps it would be instructive to the committee to understand that we do not consider that we are selling products. Rather, we provide a service, a part of which is the use of a particular product. Unlike retail installment sales, our customers have the option to choose not to renew their leases at any time, and they may request that the rental dealer pick up the merchandise and be at no additional obligation, with none of the bad impact upon them financially such as in the credit industry.

As you're aware, if you call up a retailer from whom you purchased a television set, and say, "I don't want to make the payments any more, please come get the television," you have breached a contract. However, if you call up a rental dealer and say, "I no longer choose to rent this," you have fulfilled your contract. You're a good and valued customer of the rental dealer, whereas in the retail context, you are a defaulting purchaser; your credit is marred; and you are not a valued customer of that particular person.

In addition to that, we provide a wide range of services that are not normally associated with a retail business or, where they do exist, an additional cost is charged by the rental business. Those costs were not mentioned in some of the cases that we heard previously, such as the cost of complete service and warranty. Generally, this service is done either at the home of the renter or we will go pick up the piece of merchandise, bring it back to our facility, and if it can be repaired in 1 day, return it to the home of the renter; if not, we will take a substitute piece of equipment or rental item for them to have during the time that we are servicing it.

I think we have all had experience with retail purchases where we have had service contracts; I'm not aware of any such service contract where you don't have to take it to the service center and be prepared to wait the amount of time it takes them to fix the product and then go back and pick it up. We provide that complete range of services without requiring the customer to take the product anywhere.

In addition to that, as I mentioned, there is the customer's option to terminate the rental relationship by not renewing the lease, and I think it's important that members of the committee understand that this is a significant cost to the rental dealer because he has to pay the salary of the man who drives the truck; he has to buy the truck, fill it full of gas, send him out, pick up the merchandise, bring it back, recondition it, and then get it back into the rental market.

We think that to merely take the cost of the product and to create a differential between that and the total of rental payments is to only look at half of the picture in the lessor rental environment.

With regard to S. 1152, this industry and I and other representatives have worked for over 1 year with the staff of the Federal Reserve Board. This industry endorses the disclosure provisions of S. 1152.

I was interested in the comments of Senator Dodd about the inquiries from various States' attorneys general and other State people about this area. I, myself, have dealt with the attorneys general of the States of Washington and Colorado, both of whom have indicated that as disclosures are utilized in their States, they have no problem with the method of business my clients are dealing with.

PATCHWORK LEGISLATION WILL CAUSE DOUBLE DISCLOSURE

In addition to that, there has been some legislation in different States. However, I hasten to point out there is developing a patchwork approach in this particular area. For example, there is a statute in Pennsylvania that if S. 1152 is passed in its current form without stronger preemption language, will create a double disclosure in that State.

In addition to that, there is in the State of North Carolina a new act which we were instrumental in working with that, in my opinion, could create a double disclosure in the State of North Carolina without a stronger preemption.

In addition to that, there is a disagreement among both the States and the Federal judiciary concerning the nature of our contracts. I notice that the case of Hawkes TV in Maine has been cited and relied upon where the uniform consumer credit code administrator in that State ruled that this was in fact a credit sale. Last week, that case was reversed by the Maine Supreme Court. The administrator's determination is no longer the law in that State, but the rental dealers as well as the customers in that State are suffering under confusion due to rumors of pending legislation in this area.

If there was one problem that I would want the committee to be cognizant of in this area, it's the confusion that exists in States' rights now and it's developing and snowballing and we think a strong Federal preemption in this area would alleviate that confusion. And this is, of course, one of the reasons that we consider preemption in any area we get into.

With regard to the specifics of S. 1152, our industry has only two comments to make and those relate to the preemptive section which I have already addressed, and then the advertising disclosure section.

It's my understanding that a representative of the Consumers Bankers Association has presented with his testimony a proposed amendment to the bill or change in the bill. I would, rather than getting into detail, state that the change in the advertising disclosure section as evidenced in the Consumers Bankers Association bill is the change that our industry would recommend.

I think it was an interesting comment from Senator Gorton concerning the problems with generic advertising. That is exactly our problem. We agree wholeheartedly with Ms. Simmons and Ms. Azzata that where a weekly price is advertised for a particular product or a particular line of products, then it would be appropriate in those advertisements to give the total payment disclosure.

However, most of our advertising is done generically in that we advertise TV's, appliances, and other home consumer items without being specific and without describing any specific products. Generally, ownership, as an option, is referred to in the advertisement. It's more prominent in some than others, but it generally exists because we feel it is an additional option to the consumer that they should know about. However, we feel in a generic ad where no particular item or price is mentioned but only the right to acquire ownership, that it would create an unworkable—from a practical point of view—an unworkable situation to try and disclose the total of payments of every item that the rental store had available.

So we suggested—and it was put in the Consumers Bankers Association amendment—that there be a two-tiered approach to advertising. If the rental advertiser decides he will only advertise ownership, then there would be an appropriate disclosure meeting the consumer needs in that area. However, if he sought to go further and advertise particular prices on particular items, then additional advertising disclosures relating to the total pricing would be made.

I think those are essentially the only problems or suggestions that we would make with regard to S. 1152 as currently before this subcommittee.

With regard to the proposals of Ms. Azzata, I have no objection to any of her proposals with the possible exception of that No. 5 which I only have seen recently—I saw it this morning. As I recall item 5, she wanted to have disclosed at the beginning of any lease agreement the fair market value of a product upon loss.

We, as an industry, have a problem with that and I, as a lawyer, have a problem for my clients, because I think we're put to a guessing game since the obligation of the lessee at the time of loss is the fair market value, and obviously we have no way of prognosticating at the time they first come in and initiate a rental relationship as to when the loss would occur. It could happen the next day. It could happen 3 months down the line or it could never happen. So trying to guess what the fair market value would be at the time of loss, we think, would not be appropriate.

We also feel that all the laws of all the States provide for adequate means of determining fair market value in any given commercial context if a dispute should arise between the consumer and the rental dealer.

In summary, I would just say that we have worked diligently with the Federal Reserve Board staff. I echo your comments, Senator Hawkins, that they have worked diligently and have been very cooperative. I think they have taken a good bipartisan approach to this. We, as the trade association of this industry, representing the responsible portions of this industry, applaud this effort.

I think that primarily most of our dealers are already making these disclosures either voluntarily or by the State laws that are developing, and we would hope for a quick passage of this particular bill.

[Complete statement follows:]

Testimony of

J. Samuel Choate, Jr., Esq.

My name is J. Samuel Choate, Jr. and I am a partner in the Georgia law firm of Surrett, Choate and Walker. I am pleased to have the opportunity to appear before the Subcommittee on behalf of the Association of Progressive Rental Organizations, which represents companies that rent televisions and other home appliances under short-term leases with ownership options. (These leases are referred to as rental/purchase agreements in S. 1152.) Accompanying me is Bill Ogle, who owns and operates some 20 rental outlets in Florida.

Because short-term leases are not regulated under federal law, a confusing and inefficient patchwork of state legislation and judicial decisions has begun to emerge. We believe that federal legislation regulating such short-term leases is necessary in order to obtain guidelines that provide for adequate, reasonable and, most importantly to the rental industry, uniform disclosures.

My testimony today will focus first on a description of the industry and the services it provides, and then on the status of short-term leases under federal and state law. Finally, I will discuss the industry's reasons for supporting passage, with minor modifications, of S. 1152.

Industry Profile

To meet consumer demand for a method of obtaining the use of television sets, washing machines and other home appliances without having to purchase them, a new industry has emerged that leases rather than sells such appliances to consumers. This rental industry conducts business from some 3,000 to 4,000 outlets located in all 50 states. The major rental dealers are represented by the Association of Progressive Rental Organizations (APRO), based in Austin, Texas, and formed in late 1980. APRO serves as the leading spokesperson for the industry, and assists the industry by providing news and other current information of interest to rental dealers, and by conducting educational seminars on a variety of topics.

APRO's membership consists of approximately 320 corporate members, representing some 1,500 stores. Although some APRO members are large franchise operations, most are small businesses, owning from 1 to 3 stores. Approximately 75 auxiliary members represent major U.S. manufacturers and others that supply goods and services to the industry. Rental dealers currently purchase approximately 10 percent of all appliances manufactured, and this percentage is expected to grow at an above-average pace.

Over 70% of the industry's business consists of the leasing of television sets and home appliances, such as washers, dryers and refrigerators, with full maintenance and servicing. Other products leased by the industry include furniture, stereos, air conditioners and video cassette recorders ("VCRs"). The consumer populace that has generated the demand for these leasing services is made up largely of married blue-collar workers and young, mobile single persons with incomes in the middle to lower ranges. These consumers rent appliances under short-term leases for a variety of reasons:

- They want to enjoy the use, and possibly ownership, of such products without entering into a long-term obligation.
- They prefer to leave the responsibility of product maintenance and service with the rental dealer.
- They require the use of such products only for a short period of time (for example, while they are in a temporary location or while a television or

refrigerator is being fixed) or as an alternative to purchasing a product that may become technologically out-dated within a short time (such as a VCR).

The industry's rental of televisions and other home appliances under short-term leases is unique, as a means of providing consumers with the use of appliances, in a number of ways:

- A consumer/renter has no rental obligation beyond the initial rental period, usually a week or a month, and at his or her option may renew the lease for additional periods.
- All maintenance and repair services for appliances are provided by the rental dealer, usually at a consumer's home.
- No credit application is involved; instead, rental dealers verify a consumer's address, employment status and personal references.
- Short-term lease arrangements generally do not require a down payment or a security deposit.

Short-Term Leases

The overwhelming majority of leases used by industry members have terms of from one week to one month and are renewable for additional terms at the consumer's option. This form of lease, because of its short term, provides consumers with full discretion as to how long to retain a rented home appliance, and, because it provides for low periodic payments, makes home appliances available to consumers who do not desire, or are unable, to purchase an appliance outright.

In addition to having short terms, leases utilized by the home appliance rental industry provide consumers with the option of obtaining ownership of a rented appliance at no or minimal cost if the lease is renewed continuously for a minimum number of months, generally, 12 to 18 months. */ Despite the existence of this option, the great majority of consumers rent a particular appliance for a total period of just 3 to 4 months; only approximately 22 percent of consumer/renters obtain ownership of home appliances through exercise of the option.

It is important to note that most consumers lease appliances for the short term, and that appliance leasing is viewed as an alternative to owning appliances rather than an alternative means of purchasing home appliances. However, consumers appear to value the ownership option because of the additional flexibility it gives them.

Service and Maintenance

Through a short-term lease, a consumer receives not only the use of a home appliance, but also servicing of the appliance and if necessary, its replacement, at no additional charge. This arrangement is beneficial to a consumer in several ways. First, an appliance can be obtained immediately because none of the information a consumer must provide requires lengthy processing, such as would be necessary with a credit application. Second, the consumer is assured that the leased appliance will be maintained in proper working order at no additional cost. Third,

---

*/ A less-utilized form of lease gives consumers the option to purchase a leased appliance, usually after a short initial rental period.

the consumer is relieved of any concerns about defects in the appliance and the scope of coverage for defects under limited manufacturer warranties. Finally, the consumer does not have to transport the appliance to a repair shop for service (the necessary repairs often are performed in the consumer's home), and does not have to deal with possible delays in obtaining service.

The servicing arrangement also works to the benefit of the lessor, which has a vested interest in ensuring that its property does not lose its value through lack of proper maintenance.

Federal Law

Federal law sets forth a system of rights and liabilities applicable to "consumer leases" and "credit sales," and provides that specific disclosures are to be made to consumers in connection with such leases and sales. The leases currently utilized by the home appliance rental industry, however, are neither "consumer leases," as defined by the Consumer Leasing Act, nor "credit sales," as defined by the Truth-in-Lending Act.

Under the Consumer Leasing Act, a "consumer lease" by definition has a term exceeding four months. As is noted above, the leases typically utilized by the home appliance rental industry have terms of from one week to one month, and thus do not fall within this definition.

Under the Truth-in-Lending Act, a lease constitutes a "credit sale" only if the consumer contracts to pay, as compensation for use of the leased item, a sum substantially equivalent to, or in excess of, the total value of the property. Since the total paid during the term of a consumer's obligation under a short-term lease (typically, one to four weeks) is insubstantial relative to the value of the rented appliance, this test is not met. Both the federal courts and the Federal Reserve Board have determined that a transaction involving renewable short-term leases does not constitute a "credit sale," as defined in the Truth-in-Lending Act.

State Law

Ten states have statutes that govern "consumer leases," but all parallel the federal Consumer Leasing Act in excluding from coverage leases with terms not exceeding four months. There has been little regulation at the state level aimed directly as short-term leases containing ownership options.

One exception has been Pennsylvania, where the legislature in 1982 expanded that state's definition of a credit sale in such a manner as to characterize short-term leases that provide ownership options as credit sales. Prior to this change, the state law definition of a credit sale generally paralleled the language in other states' laws and in federal law, providing that an arrangement would not constitute a credit sale unless a consumer contracted to pay the full value of the leased item.

Characterizing a short-term consumer lease as a credit sale, as was done in Pennsylvania, subjects the lease to a variety of provisions regarding disclosure, the maximum amount of a payment, and remedies upon a consumer's default which, although perhaps entirely appropriate for credit sales, create anomalous results when applied to leases. For example, to comply with the new Pennsylvania law, a rental dealer must assume that the consumer will lease a particular item long enough to obtain ownership. This ignores the fact that only some 22 percent of lease customers actually do so.

The Pennsylvania statute has made it economically infeasible to offer rental leases with a low- or no-cost ownership option. As a result, many rental companies in Pennsylvania have simply dropped this option from their rental contracts. To the surprise of many advocates of the legislation, the volume of business conducted by Pennsylvania appliance rental companies has not decreased as a result of this change. This demonstrates that there is firm consumer demand for appliance rentals. Unfortunately for Pennsylvania consumers, however, options to obtain ownership of a rented appliance at little or no cost are no longer available.

Proposed Legislation - S. 1152

To ensure accurate, meaningful and practical disclosure of both the nature of a short-term lease transaction and of the specific terms of individual leases, federal legislation that imposes uniformity as to how to make this disclosure is needed urgently. APRO supports the passage of Senator Hawkins' bill, S. 1152, with two modifications relating to the relationship of federal legislation to state law and advertising disclosures.

Relation to State Law

One of the principal objectives of federal legislation should be to clarify the present confused status under state law of short-term leases with ownership options. Section 131 of S. 1152 would do little to affect that situation because only inconsistent state laws would be preempted by the federal legislation, with inconsistency being defined more narrowly than in any previous similar federal law. The essence of the problem is efforts by state legislatures or courts to characterize the short-term consumer lease as something it is not, by labeling it a purchase or a credit sale.

The result for the industry is that, under state law, disclosure and other requirements (usury limits, for example) that have been designed to apply to credit sales would become applicable to short-term leases. Most rental dealers would find it both impracticable and uneconomical to comply with such state regulatory requirements. Particularly for dealers located in large metropolitan areas that span state lines, the additional costs and labor needed to prepare the multiple documents and advertising materials necessary to ensure compliance with both federal law and the provisions of differing state laws would be substantial. As a result, many rental dealers would be likely to drop the ownership option from their rental contracts, as has occurred in Pennsylvania, and consumers would lose the opportunity to obtain ownership, at little or no cost, of products they have rented for a period of time and would like to keep.

Federal preemption, by imposing a uniform set of disclosure requirements for the types of leases used by the rental industry, would make it feasible for dealers to continue offering this option.

Congress previously has preempted the ability of the states to characterize transactions as credit sales. Under Section 171(c) of the Truth-in-Lending Act (15 U.S.C. § 1666(j)), state law may not treat the difference between the price charged a cash-paying customer (who often is given a discount for using cash instead of credit), and the price charged a customer paying by credit, as part of the interest rate charged to the credit customer. For example, if a cash customer is able to negotiate a $95.00 price for a $100.00 product, and the retailer sells the product for $100.00 to a credit customer, the states cannot require that the $5.00 difference be quantified as a monthly multiple of an interest rate (e.g., the $5.00 discount multiplied by the 12 months in a year equals $60.00, resulting in an annual percentage rate of 60%). If states were not preempted in this area, merchants would most likely not be able to offer discounts to those paying cash since in many cases they then would be considered to be exceeding state usury limits for credit transactions.

Just as the discount provided a cash-paying customer is not considered a finance charge, the rental payments made under a short-term lease should not be characterized as a credit sale because the consumer is paying for the use and maintenance of an appliance, not purchasing it outright. Because the consumer has only a limited obligation under a short-term lease, it is illogical to characterize the differential between the required lease payments and the cost of the appliance to the dealer (or a comparable retail selling price) as a finance charge. Furthermore, it would be highly misleading to use the typically short lease term as the constant time period by which to multiply such a differential to calculate an annual percentage rate. For these reasons, we suggest that a Subsection (e) be added to § 131, Relation to State Laws, in S. 1152, which follows the format of 15 U.S.C. § 1666(j) and which would read as follows:

> Notwithstanding any other provisions of this title, any transaction pursuant to a consumer lease or other agreement within the definition of a "consumer lease" or "rental purchase agreement", as set forth in §§ 103(a)(5) and (9) of this act, shall not be considered a credit sale or other transaction for credit under the usury laws of any state or under the laws of any state relating to disclosure of information in connection with credit transactions, or relating to the types, amounts or rates of charges, or to any element of charges permissible under such laws in connection with the extension or use of credit.

Disclosures

The industry supports the provisions of S. 1152 that would require disclosure, at or before consummation of a short-term consumer lease, of its specific terms, including the amounts and timing of payments, the number of payments and total of payments necessary to acquire ownership of the property, and the fact that a consumer would not own leased property unless all payments necessary to obtain ownership had been made. Many standard industry leases already contain these disclosures.

The industry also supports the advertising disclosure provision (§ 117) of S. 1152. However, there is great concern with the requirement that the total payments necessary to obtain ownership be disclosed where only the ownership option or a non-numerical reference to payments (such as "low weekly payments") is advertised.

Section 117 of the bill would require any advertisement that refers to or states the amount of any payment or that mentions the right to acquire ownership to state the following:

1. that the transaction is a rental-purchase agreement;

2. the total payments necessary to acquire ownership; and

3. that the consumer acquires no ownership rights if the property is not rented for the time period necessary to obtain ownership.

However, virtually all industry advertising is generic in that it does not advertise any one item, but rather the concept of renting a variety of products with ownership options, as well as the fact that periodic payments are low. A typical store might offer as many as twenty different products, each with different rental rates. It is not possible, in a 30-second television or radio spot that announces the availability of TVs and other home appliances through leases, to include total cost disclosures. A dealer's only options would be to advertise just one or two products, or to omit disclosures of the ownership option and non-numeric references to the payment altogether. These disclosures, however, not only are very useful to a consumer determining whether to obtain further information about a product, but also promote competition by informing consumers of the full range and true nature of the products and services offered by the market.

Conclusion

APRO believes that S. 1152, with the modifications discussed above, is necessary legislation that will address the need of the industry to be subject to reasonable and uniform regulation as well as the need of consumers to receive adequate and uniform disclosures when entering into short-term leases with ownership options. For these reasons, APRO requests that the Subcommittee report favorably on the bill, and that the Congress move expeditiously to enact the legislation.

LAW OFFICES
BROWNSTEIN ZEIDMAN AND SCHOMER

PHILIP N. BROWNSTEIN
PHILIP F. ZEIDMAN, P. C.
MORTON W. SCHOMER
PERRY C. AUSBROOK
ARTHUR I. CANTOR
JOHN F. DIENELT, P. C.
DONALD A. KAUL, P. C.
DARYL A. NICKEL
KENNETH G. LORE
PETER J. KLARFELD
THOMAS C. EVANS
BARRY P. ROSENTHAL
DAVID J. BUTLER
RONALD A. FEUERSTEIN, P. C.
RICHARD S. KRAUT
SHELDON L. SCHREIBERG

OF COUNSEL
MELVYN H. KLEIN

ANDREW BRANE
ANDREW A. CAFFEY
SUSAN E. DUVALL
H. BRET LOWELL
KENNETH F. HALL
BARRY M. HELLER
WARREN JOSEPHSON
KYLLIKKI KUSMA
ROBERT A. SMITH
TIMOTHY J. ALUISE
SHELLEY R. GRANT
LAWRENCE O. SHEAD, III
ANITA K. BLAIR
PAMELA A. RASK
SCOTT A. STERLING
DAVID M. ASTROVE
PAMELA J. MILLS
LAURENCE E. PLATT
ROSEMARY SARKA

SUITE 800
1025 CONNECTICUT AVENUE, N. W.
WASHINGTON, D. C. 20036
TELEPHONE
202-457-6500
TELECOPIER
202-457-6573
TWX
710-8229772
CABLE ADDRESS
CAVEAT-WSH
WRITER'S DIRECT DIAL NUMBER
(202) 457-6524

August 12, 1983

The Honorable Paula Hawkins
Chairman
Subcommittee on Consumer Affairs
  of the Committee on Banking,
  Housing and Urban Affairs
United States Senate
Washington, D.C. 20510

Dear Senator Hawkins:

The Association of Progressive Rental Organizations (APRO) appreciates the opportunity to respond to the additional questions you have posed relating to APRO's testimony on S. 1152, which was submitted at the hearing held by the Subcommittee on Consumer Affairs on July 19, 1983.

1. Problems Arising Under State Law if Leases are Characterized as "Credit Sales"

You requested that we provide a list of the problems that arise if a short-term lease with an ownership option (referred to in S. 1152 as a "rental-purchase agreement") is characterized by state law as a credit sale. The problems result from the fact that these types of leases are fundamentally and irreconcilably different from credit sales. Under these leases, rental dealers contract to provide consumers with functioning appliances over a specified period of time. There is no transfer of ownership at the time an appliance is leased, there is no credit obligation, there is no requirement that a consumer retain the same type or brand of appliance from one rental period to the next, the length of a lease is only one week to one month, * and a

---

* It is primarily for this reason that short-term leases are not "credit sales" under the definition contained in the Truth-in-Lending Act.

consumer takes on none of the responsibilities of ownership, such as repairing the appliance and paying personal property taxes. The consumer may then renew the lease for an additional term or may return the product to the rental dealer. The dealer, at no additional cost to the consumer, will provide in-home service for, or replace, a product in need of repair. The consumer does not need to be concerned about limited warranties, maintenance contracts or the opportunity cost of the use of funds for a security deposit or downpayment, all of which may be elements of a credit sale.

From the perspective of the retail merchant and rental dealer, the business of leasing and servicing products operates differently from credit sales. As component parts of the dealer's business, the rental dealer leases a product for a short period of time, provides all the necessary repairs on the product in the consumer's home, even replacing the product if necessary, and accepts and restores returned merchandise so that the product may be leased again. Consumers usually obtain the product immediately and will have its use at all times because rental dealers operate with the personnel necessary to provide such services to the consumer.

A retail merchant operates differently. The merchant's primary business is to sell the product, and because ownership has been transferred, the merchant is neither responsible for servicing the product nor obligated to accept its return. As a separate part of its business, the merchant may offer a maintenance contract or credit to finance the purchase, but these services are charged for independently of the purchase price of the product.

The many differences between a credit sale and a lease transaction illustrate the inappropriateness of applying to lease transactions laws that were designed to apply only to credit sales. Some of the anomalies that would result from the application of usury, disclosure, bankruptcy and other laws are described below.

Usury Limits - Many states have enacted usury laws limiting the amount of the "finance charge" paid by a consumer, in terms of an annual percentage rate, for the credit obtained to finance the purchase of a product. Lease transactions, if characterized as "credit sales", would become subject to such usury limits. In order to apply usury laws to a lease transaction, for which there is no amount financed or finance charge, it has been suggested that a "finance charge equivalent" be computed by calculating the differential between the "fair market value (FMV) of the product" at the time the initial lease term begins (i.e., the amount financed) and the "aggregate cost to the consumer." For example, the average consumer makes 12 to 16 payments during a lease, but the "finance charge equivalent" would be calculated as if he or she were to make 78 payments. This calculation would result in a finance charge commonly in excess of state usury limits.

Use of this formula to calculate a "finance charge equivalent" for a lease transaction, however, would produce dramatically different and inequitable results compared to the calculation of a "finance charge" for a credit sale. The rental dealer's costs of providing the short-term leasing service, which are incorporated into a consumer's rental payments, would be considered part of the "finance charge equivalent" under this calculation and thus would be subject to limitation, whereas the retail merchant's costs relating to selling his product are not required to be included in the "finance charge" for a credit sale. Furthermore, this formula assumes that each customer renews his lease for the potential, but not required, maximum number of payments before ownership transfers, which is the number of payments used to calculate the finance charge equivalent. In fact, because most consumers renew their leases for only three to four months and thus do not make the potential maximum payments necessary for ownership, use of the potential maximum payments would result in calculation of an inaccurate finance charge equivalent.

The purpose of the usury laws is to control the price of credit to consumers, not to limit the price of a product or service. Thus, usury laws do not attempt to control the price a retail merchant may charge for purchase of a product. However, because of the anomalies that arise in attempting to calculate a finance charge equivalent for lease transactions, the application of usury limits to a lease transaction would have the distorted effect of controlling or limiting the price of the service, i.e., the lease payment. Since the rental dealer would thus be prevented from pricing the weekly or monthly rental payment based on the costs the dealer incurs in doing business, the dealer would be put out of business.

Disclosure Requirements - If a lease is characterized as a "credit sale", rental dealers, as a practical matter, would be unable to disclose the many terms of a credit sale required to be made under state law. For example, in a lease transaction, there is no comparable "interest rate", "finance charge", or "cash sales price" as there is in a credit sale.

Furthermore, since rental payments are made in advance and the consumer is not obligated beyond the weekly or monthly term of the lease, rental dealers would be unable to disclosure the "amount owed."

These types of disclosures would be misleading to consumers because such disclosures indicate that the transaction is an actual sale where ownership of the product is transferred immediately to the consumer, who is obligated to continue making payments. Contradictory disclosures would be made, however, under the federal disclosures proposed in S. 1152 which would indicate ownership is not passed on. These contradictory disclosure schemes would confuse the consumer and would interfere with the purpose of the federal statute to provide meaningful and accurate disclosures relating to the lease transaction, including when ownership will transfer.

Remedies - In the event that a lease is treated as a "credit sale" and the consumer does not renew the lease or return the product, the remedies available to a creditor under state law when a consumer defaults on making installment payments would become applicable to rental dealers. The purpose of such laws is to protect the consumer's equity in a product where ownership has already been transferred. To effect this purpose, such laws generally require that (i) special notice be given to the consumer regarding the default; (ii) a period of time, *e.g.*, 21 days, be afforded to the consumer to "cure" the default, and (iii) the collateral, when repossessed, be disposed of through a foreclosure sale. However, such credit sale laws create anomalous results in a lease transaction where there is no need to protect a consumer's equity because ownership has not been transferred.

A practical reason that ownership is not transferred to a consumer in a lease transaction is that the initial payment is usually small in relation to the services the consumer will receive. In addition, the consumer can terminate the lease and return the dealer's property at any time without penalty. Therefore, it is fair and appropriate for the dealer to retain title to the product; the dealer should be able to secure its return if the consumer decides not to renew the lease.

If credit sale remedies were applied to lease transactions, rental dealers might be unable to obtain return of their property, whether by request, voluntary return or through the commencement of a legal action, for as much as two to three weeks. However, unlike a retail merchant business, which does not normally obtain nor desire return of the product, and where payments are usually made on a monthly basis, a rental dealer often rents his product for only a week at a time requiring either that the product be returned so it may be leased to another consumer or that the lease be renewed through payment. Subjecting such dealers to time periods for notification and similar restrictions places an unconscionable burden on their business operations without serving the intended purpose of protecting a consumer only when title to a product has already passed.

Bankruptcy and Other Laws - In the event a consumer declares bankruptcy and does not renew his or her lease for additional terms, a rental dealer should be able to reclaim the rental property immediately because ownership was never transferred and the property is not an asset of the consumer. If a lease is characterized as a "credit sale", however, it may be considered a "security interest" in the property and an asset of the bankrupt's estate, thereby relegating the rental dealer to the position of a creditor, who may never be able to recover either rental payments or the property during the bankruptcy proceedings. Since rental dealers are not "creditors", it is unfair for rental dealers to be treated as such in bankruptcy proceedings. Further, under the Uniform Commercial Code, if a lease is considered a "security interest" securing a credit sale or loan, a rental dealer would be required to file a financing statement to protect the leased property against claims made by a consumer's creditor, bona fide purchaser, secured lender or trustee in bankruptcy even though the title for such property is clearly the rental dealer's.

The characterization of a short-term lease as a "credit sale" under state law would create the many problems discussed above and would likely put many rental dealers out of business. It is for this reason that APRO supports a preemption provision in federal legislation regulating the disclosures made by the industry to consumers. Disclosure by the rental dealer of the essential terms of the contract will provide any potential renter with sufficient information regarding the nature of the transaction and will permit him to determine whether to enter into the short-term lease. Enactment of S. 1152, with the modifications relating to preemption and the advertising disclosures which were recommended by APRO in its testimony, would accomplish these objectives.

2. Sample Lease Agreements and Advertisements

Lease Agreements - Enclosed as Exhibits A-1 through A-3 are several copies of sample lease agreements used by members of the industry in developing contracts which make appropriate disclosures to consumers.

Advertisements - Enclosed as Exhibit B are two advertisements used by members of the industry. Such advertisements show that rental dealers often either illustrate by picture, or make general reference to, the many types of products available for rental rather than describe just one product or transaction. Because this is the general practice in the industry, rental dealers would find it extremely difficult, if not impossible, to make the detailed disclosures contained in § 117 of S. 1152, which would require disclosures relating to the specific contractual terms of each product available for rental. Such disclosure requirements within a 30-second radio or TV advertisement would also be impossible. However, rental dealers would not be opposed to making the detailed disclosure in § 117 should the rental of a specific product be advertised, e.g., by stating the specific amount of any payment.

3. Breakdown of Business Expenses

You requested that we provide a breakdown of costs in a typical appliance lease with an ownership option, as well as a profit analysis. The breakdown set forthbelow shows approximately how each dollar of lease revenues on an industry-wide basis typically is allocated to cover the various costs of doing business (including the cost to rental dealers of purchasing and financing rental products), and what percentage is retained as earnings:

Inventory depreciation........................	30-35%
Interest costs - inventory..................	2-4%
Payroll and related expenses.................	20-24%
Store operations.............................	12-18%
Servicing of products........................	2-4%
Advertising..................................	6-8%
Vehicle and transportation...................	3-5%
Taxes..	2-3%
Losses.......................................	1.5-2%
Retained earnings............................	5-7%

As is the case with most businesses, the percentage representing retained earnings is not pure profit. Instead, a portion of earnings is reinvested in the business for such purposes as renovation, modernizing store operations, and expansion.

These figures reveal features of the appliance rental industry that make it unique. Because rental dealers provide complete repair and replacement services with each appliance that is leased, it can be expected, and the figures above demonstrate, that a substantial portion of a rental dealer's business expenses arise from the additional labor, vehicle and transportation costs needed to service home appliances. The rental amounts established by rental dealers reflect these costs.

I hops you find these reponses helpful in understanding how the industry operates. If you require further information or if we can be of assistance in any way, please do not hesitate to contact us.

Sincerely,

Kenneth D. Hall
for Sheldon L. Schreiberg

Enclosures

cc: Robert C. Zimmer, Esq.
J. Samuel Choate, Jr., Esq.
Edward L. Winn, III, Esq.

bcc: George C. Evans
Charles D. Sims
Thomas Devlin
Barry L. Gambini
Terry Washburn

Exhibit A-1

RENTAL AGREEMENT WITH OWNERSHIP OPTION

088698

DATE ____________ 19 ______

RENTER ____________

ADDRESS ____________

APT. NO. ________ PHONE ____________

CITY ________ STATE ________ ZIP ________

UNIT # ________ ITEM ________ BRAND ________

CONDITION ________ MODEL ________ SERIAL # ________

PROCESSING FEE $ ________ WEEKLY RENTAL RATE $ ________ SEMI-MONTHLY RENTAL RATE $ ________

DELIVERY CHG. INSTALLATION $ ________ MONTHLY RENTAL RATE $ ________ IN HOME PICK-UP CHARGE $ ________

NUMBER OF RENTAL PERIODS TO OBTAIN OWNERSHIP ________ TOTAL DOLLARS OF RENTAL THAT WILL BE PAID IF OWNERSHIP OPTION IS COMPLETED ________

INITIAL RENTAL IS ON A ____________ BASIS & EXPIRES ________ DAY ________ DATE

RENTAL AGREEMENT WITH OWNERSHIP OPTIONS

BY PAYING THE RENTAL AND OTHER CHARGES ABOVE THAT APPLY AND SIGNING THIS AGREEMENT, I AM ENTITLED TO USE PROPERTY ONLY AT THE ADDRESS ABOVE AND UNTIL MY PAID RENTAL PERIOD EXPIRES. BEFORE THE END OF MY PAID RENTAL PERIOD, I UNDERSTAND THAT MY OPTIONS ARE TO:

1. CONTINUE TO RENT (SEE RENEWAL OPTION BELOW) OR
2. BUY THE PROPERTY (SEE CASH PURCHASE OPTION BELOW) OR
3. RETURN THE PROPERTY (SEE RETURN OF PROPERTY BELOW)

I AM NOT OBLIGATED IN ANY WAY TO RENEW THIS AGREEMENT OR TO PURCHASE THE PROPERTY. IF I CHOOSE TO RENEW THIS AGREEMENT, I UNDERSTAND THAT RENT MUST BE PAID IN ADVANCE OF MY CONTINUED USE OF THE PROPERTY.

RENEWAL OPTION: I MAY RENEW THIS AGREEMENT, IF I HAVE COMPLIED WITH ITS TERMS, BY SENDING OR DELIVERING A MONTHLY, SEMI-MONTHLY OR WEEKLY RENTAL PAYMENT TO BEFORE THE END OF MY PAID RENTAL PERIOD. I UNDERSTAND DOES NOT HAVE A "GRACE PERIOD" FOR THE LATE PAYMENT OF RENTAL RENEWALS AND THAT RENT MUST BE PAID IN ADVANCE OF MY CONTINUED USE OF THE PROPERTY.

RENTAL OWNERSHIP: IF I COMPLY WITH ALL THE TERMS AND CHOOSE TO RENT THE PROPERTY FOR THE NUMBER OF MONTHS SHOWN ABOVE, WILL TRANSFER OWNERSHIP OF THE PROPERTY AND ANY UNEXPIRED MANUFACTURER'S WARRANTY TO ME. IF ALL MY RENTAL PAYMENTS ARE MADE AS AGREED, I WILL HAVE PAID THE TOTAL DOLLARS OF RENTAL SHOWN ABOVE, PLUS ANY OTHER CHARGES STATED IN THIS AGREEMENT, IF ANY APPLY. I UNDERSTAND THAT IT COSTS MORE TO OWN THE PROPERTY THROUGH WEEKLY OR SEMI-MONTHLY RENTAL THAN THROUGH MONTHLY RENTAL.

CASH PURCHASE OPTION: IF I HAVE COMPLIED WITH THE TERMS OF THIS AGREEMENT, I CAN CHOOSE TO BUY THE PROPERTY AT ANY TIME. WILL QUOTE ME THE CURRENT CASH SELLING PRICE OF THE PROPERTY ANY TIME I REQUEST IT. IF I DO NOT BUY THE PROPERTY WITHIN ONE (1) MONTH AFTER THE DATE OF THE QUOTE, THE SELLING PRICE MAY CHANGE, BASED ON THE AGE AND VALUE OF THE PROPERTY. IF I BUY THE PROPERTY, THE TOTAL I WILL HAVE PAID , EQUALS THE AMOUNT OF THE CASH PRICE PLUS THE TOTAL AMOUNT OF RENT AND OTHER CHARGES WHICH I HAVE PAID. BEFORE I BUY THE PROPERTY WILL GIVE ME THE DETAILS OF ITS LIMITED WARRANTY AND ANY MANUFACTURERS' WARRANTY WHICH MAY BE IN EFFECT. I CAN READ THESE WARRANTIES AT STORE ANY TIME I CHOOSE.

TITLE: THE RENTAL PROPERTY IS OWNED BY UNTIL I BUY IT OR GET OWNERSHIP AS STATED IN THIS AGREEMENT. I CANNOT SELL, PLEDGE, MORTGAGE OR OTHERWISE DISPOSE OF THE PROPERTY.

PROCESSING FEE: I UNDERSTAND THAT THERE IS A ONE-TIME PROCESSING FEE TO COVER THE COSTS OF PREPARING AND PROCESSING MY CUSTOMER FILE, PAYABLE AT THE TIME I ENTER INTO THIS AGREEMENT.

LOCATION OF PROPERTY: I AGREE TO KEEP THE PROPERTY AT THE ADDRESS SHOWN ABOVE. IF I REMOVE IT WITHOUT FIRST GETTING WRITTEN PERMISSION, I GIVE THE RIGHT TO IMMEDIATELY TERMINATE THE AGREEMENT.

MAINTENANCE DURING RENTAL TERM: I UNDERSTAND THAT WILL PROVIDE IN HOME SERVICE OF THE PROPERTY COVERING ANY AND ALL NORMAL REPAIRS AT NO ADDITIONAL CHARGE TO ME. WILL NOT BE RESPONSIBLE FOR THE COSTS OF ANY UNAUTHORIZED REPAIRS DONE BY OTHERS.

IN HOME PICK-UP CHARGE: IF I REQUEST THAT COLLECT A RENTAL RENEWAL PAYMENT OR IF I RENEW AFTER MY OPTION RENEWAL DATE AND ACCEPTS MY RENEWAL PAYMENT, I AGREE TO PAY THE IN HOME PICK-UP CHARGE STATED ABOVE FOR ANY TRIP OR TRIPS IT MADE TO COLLECT MY RENEWAL PAYMENT.

DAMAGES, DISAPPEARANCE, THEFT OR DESTRUCTION OF PROPERTY: I UNDERSTAND THAT CARRIES NO INSURANCE ON THE PROPERTY AND THAT I AM RESPONSIBLE FOR ITS SAFETY UNTIL IT IS RETURNED TO IF THE PROPERTY IS DAMAGED OR PARTLY DESTROYED, I AGREE TO PAY IMMEDIATELY FOR ALL REPAIRS. IF THE PROPERTY DISAPPEARS, IS STOLEN OR DESTROYED, I AGREE TO PAY IMMEDIATELY THE AMOUNT OF THE CASH SALES PRICE FOR THE PROPERTY, AS OF THE DATE OF THE DISAPPEARANCE, THEFT OR DESTRUCTION.

TERMINATION BY RENTER: I AM NOT OBLIGATED IN ANY WAY TO RENEW THIS AGREEMENT OR TO BUY THE PROPERTY. I MAY TERMINATE THIS AGREEMENT BY PROVIDING FOR THE IMMEDIATE RETURN OF THE PROPERTY TO OR BY NOT RENEWING THIS AGREEMENT BEFORE THE END OF MY PAID RENTAL PERIOD. I UNDERSTAND THAT I AM RESPONSIBLE FOR PAYING RENT ON THE PROPERTY UNTIL IT IS RETURNED TO OR UNTIL I OWN IT AS STATED IN THIS AGREEMENT.

TERMINATION BY : MAY TERMINATE THIS AGREEMENT IF I FAIL TO KEEP ANY OF MY AGREEMENTS. NOTICE OF TERMINATION MAY BE IN WRITING OR BY TELLING ME.

RETURN OF PROPERTY ON TERMINATION: IF THIS AGREEMENT IS TERMINATED BY ME OR BY I AGREE TO MAKE ARRANGEMENTS IMMEDIATELY WITH FOR ACCESS TO AND POSSESSION OF THE PROPERTY. I AGREE TO PAY ANY RENT AND OTHER CHARGES I OWE WHEN THE PROPERTY IS RETURNED.

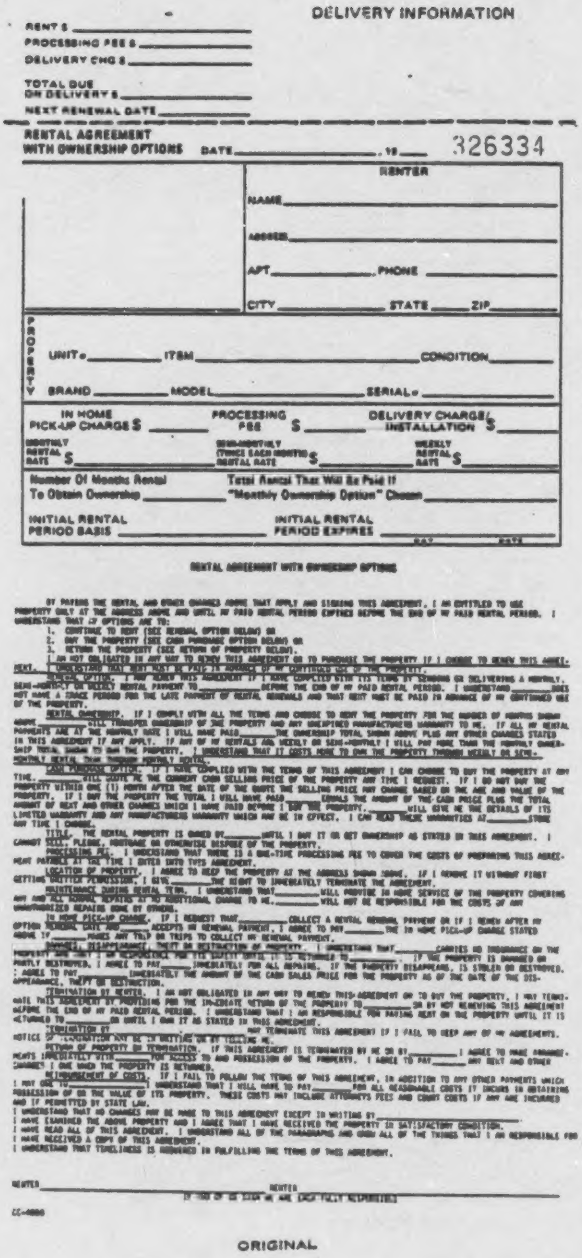
REIMBURSEMENT OF COSTS: IF I FAIL TO FOLLOW THE TERMS OF THIS AGREEMENT, IN ADDITION TO ANY OTHER PAYMENTS WHICH I MAY OWE TO I UNDERSTAND THAT I WILL HAVE TO PAY FOR ALL REASONABLE COSTS IT INCURS IN OBTAINING POSSESSION OF OR THE VALUE OF ITS PROPERTY. THESE COSTS MAY INCLUDE ATTORNEY'S FEES AND COURT COSTS, IF ANY ARE INCURRED AND IF PERMITTED BY STATE LAW.

I UNDERSTAND THAT NO CHANGES MAY BE MADE TO THIS AGREEMENT EXCEPT IN WRITING BY
I HAVE EXAMINED THE ABOVE PROPERTY AND I AGREE THAT I HAVE RECEIVED THE PROPERTY IN SATISFACTORY CONDITION.
I HAVE READ ALL OF THIS AGREEMENT. I UNDERSTAND ALL OF THE PARAGRAPHS AND KNOW ALL THE THINGS THAT I AM RESPONSIBLE FOR.
I HAVE RECEIVED A COPY OF THIS AGREEMENT.
I UNDERSTAND THAT TIME IS OF THE ESSENCE IN FULFILLING THE TERMS OF THIS AGREEMENT.

RENTER ____________ ____________ CUSTOMER I.D.

WITNESS ____________

Exhibit A-2



DELIVERY INFORMATION

RENT $ __________

PROCESSING FEE $ __________

DELIVERY CHG $ __________

TOTAL DUE ON DELIVERY $ __________

NEXT RENEWAL DATE __________

RENTAL AGREEMENT WITH OWNERSHIP OPTIONS DATE __________, 19__ 326334

RENTER

NAME __________

ADDRESS __________

APT __________ PHONE __________

CITY __________ STATE _____ ZIP _____

PROPERTY

UNIT # __________ ITEM __________ CONDITION __________

BRAND __________ MODEL __________ SERIAL # __________

IN HOME PICK-UP CHARGE $ __________ PROCESSING FEE $ __________ DELIVERY CHARGE/ INSTALLATION $ __________

MONTHLY RENTAL RATE $ __________ SEMI-MONTHLY (TWICE EACH MONTH) RENTAL RATE $ __________ WEEKLY RENTAL RATE $ __________

Number Of Months Rental To Obtain Ownership __________ Total Rental That Will Be Paid If "Monthly Ownership Option" Chosen __________

INITIAL RENTAL PERIOD BASIS __________ INITIAL RENTAL PERIOD EXPIRES __________

ORIGINAL

Exhibit A-3

COLORTYME
TV ● Video ● Audio ● Appliances ™

[illegible]

C U116

THIS COLORTYME STORE OPERATED BY

DATE ______

1 LESSOR
NAME ______
ADDRESS ______
CITY ______ STATE ______
ZIP ______ PHONE ______

2 LESSEE
NAME ______
ADDRESS ______
CITY ______ STATE ______
ZIP ______ PHONE ______

FOR OFFICE USE ONLY

3 DESCRIPTION OF LEASED PROPERTY

QUANTITY ______ ITEM ______ BRAND ______
MODEL ______ SERIAL NO ______ CONDITION ( ) NEW ( ) USED

4 RENTAL PAYMENT AND TERM

THE TERM OF THIS LEASE IS	( ) ONE MONTH	( ) ONE-HALF MONTH	( ) TWO WEEKS	( ) ONE WEEK
RENTAL RATE	$ ______	$ ______	$ ______	$ ______
SALES TAX (IF APPLICABLE)	$ ______	$ ______	$ ______	$ ______
TOTAL RENTAL PAYMENT	$ ______	$ ______	$ ______	$ ______
IN-HOME COLLECTION FEE	$ ______			
DAILY RATE, INCLUDING SALES TAX, WHEN APPLICABLE	$ ______			
	$ ______			

THE ABOVE RENTAL TERM BEGINS ON ______ 19 ______. THE RENTAL PAYMENT IS DUE IN ADVANCE. RENEWAL PAYMENTS, IF ANY, ARE DUE ON OR BEFORE THE LAST DAY OF THE TERM. SEE ITEM 8 BELOW FOR YOUR RIGHT TO RENEW.

5. OPTIONAL DAILY RENTAL RATE FOR INTERIM PERIOD: IF THE LESSEE DESIRES TO USE THE LEASED GOODS PRIOR TO THE FIRST DATE OF THE RENTAL TERM, IT MAY LEASE THE PROPERTY FOR SUCH INTERIM PERIOD ON A DAILY RATE WHICH SHALL BE ONE-SEVENTH (1/7th) OF THE RENTAL RATE FOR ONE WEEK. SEE ITEM 8 BELOW FOR THE APPLICABILITY OF THE DAILY RATE UPON LESSEE'S FAILURE TO RETURN THE LEASED GOODS AT THE END OF THE TERM.

6. RENT-TO-OWN OPTION: I UNDERSTAND THAT THE LESSOR WILL TRANSFER OWNERSHIP OF THE PROPERTY DESCRIBED IN ITEM 3 TO ME ONLY IF I RENEW THIS LEASE FOR ______ SUCCESSIVE LEASE TERMS. I UNDERSTAND THAT IF I RENEW THIS LEASE FOR ______ SUCCESSIVE LEASE TERMS THE TOTAL AMOUNT OF RENT I WILL HAVE PAID WOULD BE $ ______, PLUS TAXES (NOT INCLUDING ANY AMOUNT PAID DURING AN INTERIM PERIOD DESCRIBED IN ITEM 5, ABOVE). I UNDERSTAND THAT I DO NOT ACQUIRE ANY OWNERSHIP RIGHTS IN THE PROPERTY DURING ANY TERM OF THIS LEASE AGREEMENT UNLESS I RENEW THIS LEASE FOR ______ SUCCESSIVE LEASE TERMS, INCLUDING THE INITIAL LEASE TERM.

I HAVE READ AND UNDERSTAND THE PROVISIONS OF THIS ITEM.

______ WITNESS
______ LESSEE

7. TITLE AND TERM: THE LESSEE RECEIVES THE USE AND POSSESSION OF THE PROPERTY DESCRIBED IN ITEM 3 ABOVE FOR THE RENTAL PERIOD INDICATED IN ITEM 4 ABOVE, SO LONG AS THE LESSEE PAYS THE RENTAL PAYMENT AND COMPLIES FULLY WITH ALL AGREEMENTS AND CONDITIONS IN THIS LEASE. THE LESSOR IS THE OWNER OF THE LEASED PROPERTY, AND THE TITLE, DURING THE TERM OF THE LEASE AND SUBSEQUENT TO THE TERMINATION THEREOF, SHALL ALWAYS REMAIN WITH THE LESSOR. LESSEE HAS NO RIGHT TO SELL, MORTGAGE, PAWN, PLEDGE, ENCUMBER, OR DISPOSE OF SAID PROPERTY.

8. LESSEE'S RIGHT TO RENEW: LESSEE, AT ITS OPTION, MAY RENEW THIS LEASE FOR AN ADDITIONAL TERM AT THE CONCLUSION OF EACH TERM OF RENTAL PERIOD BY THE PAYMENT TO THE LESSOR OF THE RENTAL PAYMENT. PAYMENT BY THE LESSEE OF AN ADDITIONAL RENTAL PAYMENT ON OR BEFORE THE LAST DAY OF EACH TERM SHALL RENEW THIS AGREEMENT FOR AN ADDITIONAL TERM. HOWEVER, IN NO EVENT SHALL THE LESSEE BE OBLIGATED FOR ANY RENTAL PAYMENT BEYOND ANY TERM FOR WHICH IT HAS MADE A RENTAL PAYMENT, UNLESS THE LESSEE RETAINS POSSESSION OF THE LEASED GOODS BEYOND SUCH TERM, IN WHICH CASE IT SHALL BE LIABLE FOR RENTAL PAYMENTS AT THE DAILY RATE FOR EACH SUCH DAY IT RETAINS POSSESSION UNTIL IT RETURNS THE LEASED GOODS, OR UNLESS IT RENEWS THE LEASE FOR AN ADDITIONAL TERM.

9. LESSEE'S RIGHT TO TERMINATE: LESSEE, AT ITS OPTION, MAY AT ANY TIME TERMINATE THIS AGREEMENT WITHOUT FURTHER OBLIGATION OR PENALTY BY SURRENDER OF THE PROPERTY TO THE LESSOR IN ITS PRESENT CONDITION, FAIR WEAR AND TEAR EXCEPTED.

10. LESSOR'S RIGHT TO TERMINATE: THIS AGREEMENT SHALL, AT THE OPTION OF THE LESSOR, TERMINATE UPON THE FAILURE OF LESSEE TO MAKE A RENEWAL RENTAL PAYMENT IN THE MANNER DESCRIBED IN ITEM 8 ABOVE, OR BY BREACH BY THE LESSEE OF ANY AGREEMENT, CONDITION OR REPRESENTATION, ALL OF WHICH ARE AGREED TO BE MATERIAL. LESSEE SHALL IMMEDIATELY SURRENDER THE PROPERTY TO LESSOR IN ITS PRESENT CONDITION, FAIR WEAR AND TEAR EXCEPTED, AND LESSEE SHALL REMAIN LIABLE FOR THE PERFORMANCE OF ALL AGREEMENTS AND CONDITIONS HEREOF.

11. LOCATION OF PROPERTY: LESSEE WARRANTS AND AGREES THAT IT WILL KEEP SAID PROPERTY IN ITS POSSESSION AT THE RESIDENCE ADDRESS ABOVE AND WILL NOT REMOVE SAID PERSONAL PROPERTY FROM SAID ADDRESS WITHOUT AGREEMENT IN WRITING EXECUTED BY THE LESSOR. IF LESSEE MOVES SAID PROPERTY WITHOUT SECURING PRIOR AGREEMENT IN WRITING FROM LESSOR, THIS AGREEMENT SHALL BE THEREBY BREACHED, GIVING THE LESSOR THE RIGHT OF IMMEDIATE POSSESSION AND LESSEE MAY BE LIABLE FOR PROSECUTION UNDER APPLICABLE STATE LAW.

12. INSURANCE AND DAMAGES: THE LESSEE IS FULLY RESPONSIBLE FOR THE LOSS, THEFT OR DESTRUCTION OF THE RENTAL PROPERTY FROM ALL CAUSES WHATEVER AND, IN THE EVENT OF SUCH LOSS, THEFT OR DESTRUCTION, THIS AGREEMENT SHALL TERMINATE AND THE LESSEE AGREES TO PAY TO THE LESSOR THE FAIR MARKET VALUE OF THE PROPERTY. IN THE EVENT OF PARTIAL DAMAGE OR DESTRUCTION FROM ANY CAUSE WHATEVER THE LESSEE AGREES TO PAY TO THE LESSOR A REASONABLE COST OF REPAIR TO SAID PROPERTY. THE LESSOR DOES NOT PROVIDE FOR ANY INSURANCE ON THE RENTAL PROPERTY.

13. IN-HOME COLLECTION FEE: SHOULD THE LESSOR SEND A PERSON TO LESSEE'S RESIDENCE TO COLLECT ANY RENEWAL RENTAL PAYMENT, LESSEE WILL BE CHARGED AN EXTRA $ ______ FOR THAT SERVICE.

14. MAINTENANCE: FOR THE TERM OF THIS AGREEMENT AND ANY RENEWAL THEREOF, THE LESSOR AGREES TO MAINTAIN THE LEASED PROPERTY IN GOOD WORKING ORDER, AND ANY AND ALL MAINTENANCE OR REPAIRS MUST BE PERFORMED BY THE LESSOR, AND THE LESSOR WILL NOT BE RESPONSIBLE FOR COSTS OF ANY REPAIRS DONE AT THE REQUEST OF THE LESSEE BY OTHERS. IN THE EVENT THAT THE PROPERTY CANNOT BE REPAIRED, IT WILL BE REPLACED BY A COMPARABLE PIECE OF PROPERTY.

15. ASSIGNMENT: LESSEE SHALL HAVE NO RIGHT TO SELL, TRANSFER, ASSIGN, SUB-LEASE OR IN ANY WAY ENCUMBER THE LEASED PROPERTY. THE LESSOR RETAINS THE RIGHT TO SELL, TRANSFER, ASSIGN OR ENCUMBER ITS INTEREST IN THIS LEASE AGREEMENT AND THE LEASED PROPERTY.

16. LESSOR'S RIGHT TO ENTER AND TAKE POSSESSION: THE LESSOR AND ITS AGENTS, UPON THE TERMINATION OF THIS AGREEMENT, ARE SPECIFICALLY AUTHORIZED TO TAKE POSSESSION OF AND REMOVE THE PROPERTY. LESSEE AGREES TO INDEMNIFY LESSOR AND ITS AGENTS FOR ALL COSTS, EXPENSES AND DAMAGES, INCLUDING REASONABLE ATTORNEY'S FEES OCCURRING DIRECTLY OR INDIRECTLY FROM OR RELATED TO THE TAKING POSSESSION OF SAID PROPERTY CAUSED BY THE FAILURE OF THE LESSEE TO VOLUNTARILY SURRENDER THE PROPERTY.

17. MODIFICATION OF AGREEMENT: THIS RENTAL AGREEMENT MAY BE MODIFIED, VARIED, ALTERED OR EXTENDED OR THE AGREEMENTS OR CONDITIONS HEREOF WAIVED ONLY BY AGREEMENT IN WRITING EXECUTED BY THE LESSOR.

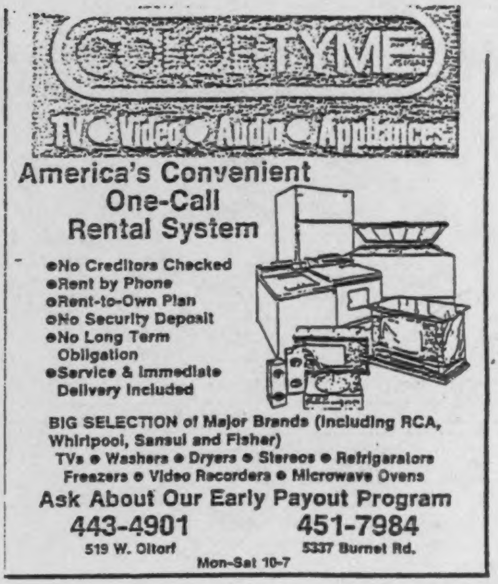
18. RECEIPT OF PROPERTY: LESSEE ACKNOWLEDGES RECEIPT OF THE PROPERTY DESCRIBED IN ITEM 3 ABOVE, IN SATISFACTORY OPERATING CONDITION.

I HAVE READ AND UNDERSTAND THE ABOVE RENTAL
AGREEMENT AND I AGREE TO BE BOUND BY ITS TERMS

______ LESSEE

______ WITNESS
______ LESSEE

Exhibit B



COLORTYME

TV • Video • Audio • Appliances

America's Convenient
One-Call
Rental System

- No Creditors Checked
- Rent by Phone
- Rent-to-Own Plan
- No Security Deposit
- No Long Term Obligation
- Service & Immediate Delivery Included

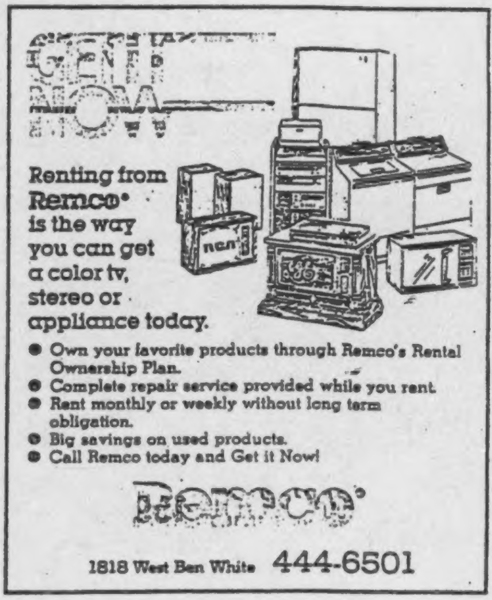
BIG SELECTION of Major Brands (including RCA, Whirlpool, Sansui and Fisher)
TVs • Washers • Dryers • Stereos • Refrigerators
Freezers • Video Recorders • Microwave Ovens

Ask About Our Early Payout Program

443-4901
519 W. Oltorf

451-7984
5337 Burnet Rd.

Mon-Sat 10-7



GET IT NOW

Renting from Remco® is the way you can get a color tv, stereo or appliance today.

- Own your favorite products through Remco's Rental Ownership Plan.
- Complete repair service provided while you rent.
- Rent monthly or weekly without long term obligation.
- Big savings on used products.
- Call Remco today and Get it Now!

Remco®

1818 West Ben White 444-6501

Senator HAWKINS. Thank you, Mr. Choate.

Mr. McGregor, do you have a statement?

STATEMENT OF ROBERT S. McGREGOR, PRESIDENT, FURNITURE RENTAL ASSOCIATION OF AMERICA, ACCOMPANIED BY JAMES GOLDBERG, GENERAL COUNSEL

Mr. McGREGOR. Yes, Madam Chairman.

Madam Chairman and members of the subcommittee, my name is Robert S. McGregor. I am president of McGregor Enterprises, Inc., a 64-year-old business headquartered in Hattiesburg, Miss., and doing business as McGregor Rents Furniture. We currently operate eight showrooms in Mississippi, Alabama, Florida, and Louisiana.

With me today is our FRAA general counsel, James Goldberg, whose offices are here in Washington.

[Complete statement follows:]

Statement of

ROBERT S. MCGREGOR

on behalf of

FURNITURE RENTAL ASSOCIATION OF AMERICA

Madam Chairman and Members of the Subcommittee, my name is Robert S. McGregor. I am President of McGregor Enterprises, Inc., a 64-year-old business headquartered in Hattiesburg, Mississippi, and doing business as McGregor Rents Furniture. We currently operate eight showrooms in Mississippi, Alabama, Florida and Louisiana.

I am appearing here today in my capacity as the current President of the Furniture Rental Association of America (FRAA), which is headquartered in Westerville, Ohio, a suburb of Columbus. FRAA is a national organization whose 55 member companies operate more than 365 showrooms in more than 35 states, the District of Columbia and Canada. Together, these companies account for the overwhelming majority of furniture rented in America today.

Renting furniture appeals to many different kinds of people: some are newly single, some are newly married and unsure about a permanent residence, some are on temporary assignment in connection with their employment, some are students, some are professional athletes who spend only a short period in a city away from home. There appears to be a balance between male and female customers. Most reside in apartments or rent houses, rather than own homes.

In order to be able to supply this Subcommittee with some clear information about the nature of the furniture rental business, FRAA recently conducted a survey of leasing practices. Forty-nine companies -- nearly 90% of FRAA's membership -- had responded though July 12.

The survey did reveal some definite trends about our customers. The "typical" customer is likely a professional, with a college degree or better, earning in excess of $25,000 annually; one company reported an average income of $50,000 for its customers. The age of the "typical" customer is generally described as "young" with a range of 25-40. The word "mobility" also came through frequently as an adjective used to describe the "typical" furniture rental customer. Finally, it appears that the "typical" customer rents furniture because he wants flexibility and not because he views rental as a means to secure ownership.

The results of the FRAA survey are summarized on the page following my prepared testimony, but I'd like to highlight them now.

Nearly 35% of the FRAA membership reports that they have no leases with an initial period of more than four months. This may be due in part to a conscious decision, made in 1976, that the disclosure requirements of the federal Consumer Leasing Act did not properly fit furniture rental transactions and therefore the companies opted not to be covered. Additionally, the requirement for subsequent disclosures when an initially covered lease is extended has proven onerous and costly. I should note here, however, that FRAA's General Counsel review has indicated that the information called for in the Consumer Leasing Act is made available to prospective customers, though perhaps not in the form mandated by the law and Regulation M.

Of those who do write federally-covered leases, some 58% of the lease contracts are written for an initial term exceeding four months.

The average furniture rental unit is kept by the customer for a period of 8.9 months. While one company reported an average lease-length of 18 months, the vast majority of FRAA members reported average lease lengths of 7-10 months.

Without exception, all responding companies reported offering their customers the option to purchase rental furniture at any time. The terms of the purchase options vary among companies, and also vary among geographic regions depending on competition. Nationally, slightly more than 11% of FRAA customers exercise the option to purchase the furniture they rent. The purchase percentage varies widely among companies, from a low of 1% to a high of 45%. It should be noted that, when weighted for size of customer base, the 11% figure is actually lower. The reflects the customer's initial intent to lease for flexibility reasons; only when a mobile situation becomes more permanent does a customer later consider ownership.

The average useful life of rental furniture is in the 2-1/2 to 3-year range for upholstered pieces, with case goods such as coffee tables, dining tables, chests, etc., generally lasting 4-5 years in inventory. When items are no longer serviceable, they are typically sold by the furniture rental company through their own rental return centers. Typically, these centers are in a separate location from the rental showroom, particularly in large metropolitan areas like Washington. Care is taken to mark these items as rental returns and run the selling operation separately from the rental operation.

Nearly 70% of FRAA members report that television sets are part of their rental inventory, and nearly one-third report renting some kind of other appliances, including kitchen equipment or stereo/audio equipment. Following-up questioning revealed that the overwhelming majority of companies renting these other items do so only as part of a "package" of furniture. At this point, I should note that the "typical" furniture rental "unit" is a living room, dining room, bedroom package. Many companies offer pre-selected groupings of furniture in pre-established price ranges. However, all companies also offer the customer the alternative of "mixing and matching" individual items to fill as big or as small residence as the customer desires. Virtually no one rents single items, whether furniture pieces, television sets or appliances.

When Congress adopted the Consumer Leasing Act in 1975, it was against the backdrop of perceived abuses with regard to automobile leasing practices, particularly in connection with so-called "open-end" leases. Congress had little knowledge of the practical aspects of the furniture rental industry at that time. Indeed, one of the reasons why many furniture rental companies have apparently opted to write only leases for four months or less is the severe civil liability for even the most technical violations of the Consumer Leasing Act as well as the regulatory requirement for continued notification and disclosures regarding extension of a month-to-month lease. I must add again that this does not mean that furniture rental companies are not complying with the spirit of the law in making all of the disclosures necessary for informed consumer choice.

In the years since the Act became effective, there has been little of the confusion and litigation which marked the history and evolution of the Truth in Lending Act, of which leasing disclosure requirements are a part. Until leasing regulations were separated into their own free-standing Regulation M a few years ago, there were virtually no major amendments to the regulations and few interpretive letters issued by the Federal Reserve Board. And it was only recently that the Federal Trade Commission announced its first enforcement action under the Consumer Leasing Act.

All of this indicates to us that the principles and requirements of the federal Consumer Leasing Act are working quite well.

Because the Federal Reserve Board staff has been trying for years to make its credit disclosure requirements more understandable, the effort in that area which resulted in the enactment of the Truth in Lending Simplification and Reform Act in 1980 has spilled over into the leasing area. The bill under consideration by this Subcommittee, the Consumer Lease and Rental Purchase Agreement Act (S. 1152) is patterned largely on the Truth in Lending simplification efforts and is the result of more than two years of study by the FRB staff.

While the principle of simplification is praiseworthy, it does not have the same urgency with regard to leasing requirements as it did with regard to credit disclosures. Indeed, the experience of some closed-end credit grantors with the new disclosure requirements under present law do not seem to be causing a comprehension problem, either for consumers or leasing companies, FRAA wonders why this "federal box" concept should be carried over into leasing.

Our greatest concern, however, is with the expansion of the current law's scope to cover, for the first time, so-called "rental-purchase agreements". In S. 1152, these are defined to include an agreement for an initial period of four months or less (i.e., those agreements not now covered by Consumer Leasing Act disclosures) "that is automatically renewable with each payment and that permits the consumer to become the owner of the property for no or nominal consideration after making a specified number of payments."

The explanation offered in support of this expansion is that complaints have been received concerning abuses by firms, particularly those renting televisions sets and home appliances. According to the statement made by Senator Hawkins on introduction of S. 1152:

> Apparently, lease agreements have been offered emphasizing ownership options without clearly disclosing the type of payments needed to acquire titles, which may total several times their retail prices. In other cases, advertising is directed toward low income people and is designed to deceive them into thinking there is no other financing option if they want to own an appliance. Other allegations included renting used property although it was represented as new.

FRAA members do not condone abusive practices or unethical conduct. However, the solutions to these problems, where they exist, may already exist in the form of state consumer protection statutes. Often called "Little FTC Acts," these laws forbid a variety of unfair and deceptive practices which would encompass the types of abuses alleged by the supporters of S. 1152. FRAA therefore would strongly question why the law needs to be expanded merely to deal with these abuses, since remedies already exist.

Some states, however, have moved to correct these problem areas in a way which is most disruptive to furniture rental companies. Pennsylvania enacted legislation last year making rental-purchase agreements subject to the credit disclosure requirements of that state's Retail Installment Sales Act. As the FRAA member survey indicates, all furniture rental companies offer their customers a purchase option; therefore, they would be required, under Pennsylvania-type statutes, to make credit disclosures. But that is an impossibility, for there is no "cash price" for rental furniture on which to base credit disclosures. There is a purchase prices, but it is a function of rental payments, and not of a cash price plus Finance Charge, as is the case with a credit sale of merchandise.

North Carolina has recently enacted similar disruptive legislation, and there are rumblings of efforts under way in Michigan, Wisconsin and Connecticut.

Even though, as we have indicated, remedies for abusive practices already exist in many states, it may be appropriate for Congress to step in and adopt one uniform, mandatory approach to the problem. Such an approach would eliminate the confusion of dealing with different state laws, and with different court interpretations as to whether our contracts are leases or conditional sales agreements. In that context, we would offer several specific comments about S. 1152.

Our first problem relates to the definition of a "rental purchase agreement." In order to fall within the bill's coverage, it is required that there either be no consideration for the purchase or a "nominal" consideration. However, the word "nominal" causes a problem. Such an approach would eliminate the confusion of dealing with different state laws, and with different court interpretations as to whether our contracts are leases or conditional sales agreements. Black's Law Dictionary defines "nominal" to mean, among other things, "not real or substantial". But such a definition is of little practical assistance to a furniture rental company which asks its attorney for advice about whether its required end-of-lease purchase payment subjects it to coverage. "Nominal" is simply too important a word in this definition to be left to uncertain interpretation and subsequent litigation. It must be defined; perhaps the 10% definition as used in the new North Carolina law would be appropriate.

Our second problem relates to the proposed requirement, in section 114(6), that the lessor indicate whether the property is new or used. This is an extremely difficult concept for furniture rental companies to implement. Differing pieces of furniture, unlike differing televisions sets or applicances, are not readily identifiable one from another; put another way, all similar sofas look alike, and there is no serial number to tell one from another. Because of this, it is not readily apparent, and it may well in fact be impossible to tell, whether a particular item has been previously rented. The problem is compounded when one considers that the typical furniture rental "unit" is a living room, dining room, bedroom combination, which may include 12-20 separate items. It should also be pointed out that the "typical" customer, who, as we have indicated, is highly mobile, is not generally interested whether the furniture is new or used. The customer, like a customer who picks up a rental car at an airport while on a business trip, wants a serviceable, attractive, operational item. Additionally, all FRAA members guarantee customer satisfaction with the merchandise received as well as guaranteeing that all furniture is in "showroom condition."

Our third problem relates to the pre-emption of state laws provision in section 131. The Section uses familiar "inconsistency" standard, and indicates a state law is pre-empted if one is unable to comply with them without violating a provision of this title. But what about laws like Pennsylvania's. Can a company comply with both laws without setting forth confusing information? It's important in the area of consumer leasing, where there is a purchase option, to have a strong federal statement that these transactions are, in fact, lease transactions, and not conditional sales or disguised credit transactions. There must be a Congressional finding that these transactions differ from conditional sales and are not to be treated like that kind of transaction. I am sure that FRAA's General Counsel will be able to supply additional detail on this point.

In conclusion, we wish to restate FRAA's belief that regulation of the rental/purchase transaction, and modification of existing leasing disclosure requirements are not necessary at this time, but if the Congress does find that such changes are called for, then they should be accomplished with the least disruption to an already smoothly-functioning industry.

I would be glad to answer any questions you may have.

FURNITURE RENTAL ASSOCIATION OF AMERICA

SURVEY OF CONSUMER LEASING PRACTICES

Number of Association Members: 55

Number of Respondents: 49 (89.1%)

Percentage of leases written for an initial period of more than four months:

17 respondents (34.7%) report no leases covered by Consumer Leasing Act

Of the remaining (32) respondents, the average percentage of leases covered by Consumer Leasing Act is 58.0%

The average unit is kept on lease for 8.9 months.

Disclosure of new/used condition of furniture:

Yes: 38.8%
No: 61.2%

Offer purchase option.

Yes: 100%
No: 0%

Average percentage of customers exercising purchase option: 11.6%

High: 45%
Low: 1%

Disposal of Unserviceable furniture:

The overwhelming majority of respondents (79.6%) dispose of furniture through their own rental return centers. A lesser percentage reported using warehouse sales (1.0%) or disposal through used furniture dealers (0.7%).

Rental of Items Other Than Furniture:

Television Sets: 69%

Other Appliances (including electronic equipment): 30.6%

No such items rented: 28.6%

Senator Hawkins. Thank you, Mr. McGregor.
Mr. Neumann.

STATEMENT OF MILTON L. NEUMANN, PRESIDENT, AMERICAN RENTAL ASSOCIATION, ACCOMPANIED BY C. A. SIEGFRIED, JR., EXECUTIVE DIRECTOR; AND WILLIAM T. STEPHENS, GENERAL COUNSEL

Mr. Neumann. Thank you.

My name is Milton L. Neumann. I am president of the American Rental Association and owner of A to Z Rental Centers of Spokane, Wash. Accompanying me today are C. A. Siegfried, the executive director of the American Rental Association, and William T. Stephens, our general counsel. I am pleased to present the views of the American Rental Association on Senate bill 1152, the Consumer Leasing and Rental-Purchase Act of 1983.

All of my comments will address only the portion of the bill relating to rental-purchase.

[Complete statement follows:]

STATEMENT
OF THE
AMERICAN RENTAL ASSOCIATION
BY MILTON L. NEUMANN, PRESIDENT
ON SENATE BILL S.1152
THE CONSUMER LEASING AND RENTAL PURCHASE ACT

Introduction

My name is Milton L. Neumann. I am President of the American Rental Association and owner of A to Z Rental Centers of Spokane, Washington. Accompanying me are C.A. Siegfried, Jr., C.A.E., ARA's Executive Director, and William T. Stephens of Stephens & Krebs, who is our General Counsel. I am pleased to present the views of the American Rental Association on Senate Bill 1152, the Consumer Leasing and Rental Purchase Act.

The American Rental Association

The American Rental Association ("ARA") is a national and international trade association, comprised of over 3,000 member firms engaged in the business of renting diverse items of personal property. Our national office is located in the ARA Building at 1900 19th Street, Moline, Illinois 61265.

ARA member firms rent an extremely wide variety of equipment and other personal property, including lines such as homeowner items; party supplies and equipment; construction machinery and equipment; vehicles and other mobile equipment; medical equipment and devices; and exercise and recreational equipment. ARA is in its 28th year of operation and is the leading organization representing the industry of personal property rentals. Each year the Association devotes more than 7% of its gross receipts to its national, institutional advertising program and its public relations program for the sole purpose of promoting the "rental concept" to the public, and enhancing the credibility of the entire rental industry as a whole.

"Lease-to-Own" Transactions

ARA is concerned about the public confusion and misconceptions resulting from the recent proliferation of the so-called "rent-to-own" agreements for such items as televisions and appliances which are normally purchased and owned because they are regularly and continually in use. Our concern is founded upon the "rental" label given to these transactions in which the "rental concept" is used deceptively on many occasions as a marketing tool for effecting either an eventual sale or repossession. These transactions and their associated practices tend to contaminate the concept of rental in the minds of the consumer public, and dilute our educational programs of institutional advertising and public relations.

S.1152 mistakenly refers to these transactions as "rental-purchase"; but their true nature is not that of a rental at all. They are not "rental-purchase" agreements because rental is not a part of the transaction. Rather, each such transaction is a succession of multiple short-term leases, each of which is for a fixed term of one week or one month. They are leases because there is a fixed duration for each mandatory segment (i.e. a one full week, or one full month period.) Leases, of course, may be of either short-term, or long-term, duration; and in practice, the basis for distinction between the two, is customarily one year. In either case however, they are still leases because they are for definite, fixed periods of time.

Also, the initial lease of the contemplated series of leases is expressly intended to result eventually in the transfer of title at the end of the required number of the payments under the successive,uninterrupted,short term leases in the series.

Therefore the label, "rental-purchase" as it appears in the title and throughout the text of S.1152 is a misnomer. We suggest that a correct description would be a "consumer, multiple lease-purchase", or for purposes of brevity, perhaps simply, "lease-purchase".

The Nature of Rental

The rental transaction is widely misunderstood. In law, and in Webster's dictionary, no real distinction is made between renting and leasing. This is because the common law and newly accepted definitions evolve slowly and lag decades behind the reality of change.[1] Nonetheless, the differences between rental and lease are both real and are quite different.

> *A rental is always for a short and indeterminate period of time (a few hours, a day, a week, or sometimes longer) as occasion demands. The essential and distinguishing characteristic of the rental transaction is that the customer can return the property at any time (e.g. any day) he or she desires, and pay only for the time actually kept. The customer's cost, liability and use begins and ends with the indefinite rental period - - which the customer controls.*

---

[1] The rental industry as we know it today, did not get started until shortly following World War II.

Unlike the so-called,"rent-to-own" businesses, rental firms do not market ownership. Rentals are always for short and indefinite terms. Rental is most appropriate to those items of personal property for which the consumer has only intermittent use as occasion may demand; in contrast to items which are normally purchased and owned because they are regularly and continually in use, e.g. television and washer/dryer appliances.

Renting offers many advantages, primarily economic, and all to the benefit of the consumer in the form of lower costs. Let's take a brief look at just a few of them.

- Servicing Rentals always include full service and maintenance. The consumer is never required to purchase a service or maintenance contract.

- Breakdown Virtually all property is subject to occasional breakdown in use. When this happens, it is immediately replaced by the rental firm at no cost to the user.

- Storage Rental obviates the consumer's need and expense for storage facilities for the property.

- Availability without ownership Before the rapid growth of rental firms, a major feature favoring ownership was ready availability and convenience. These have now become among the strongest reasons for renting, since rental firms are now almost universal.

- Education Rental firms educate their customers as to the appropriate item of equipment or property for their purpose and instruct them as to proper and safe usage.

- Obsolescence Day-to-day renting eliminates obsolescence risk for the consumer. Faster and better equipment is constantly appearing as manufacturers compete for a market.

- Personal property taxes There are no personal property taxes for the user of rental items.

- Conservation of capital Renting conserves capital. It frees capital for other, potentially more profitable uses than that of being tied up in equipment.

Rental firms throughout the country perform an efficient service which fills an important economic need. They provide the convenience and ready availability of diversified items of personal property to consumers for their short-term use, as occasion may demand and at a cost which they control. The consumers may return the item whenever they desire and pay only for the time they have kept it, as opposed to having to pay rent for the remainder of a fixed term, as in the case of a lease.

Rental-Purchase is a Misnomer

Although S.1152, if enacted, will not directly affect the rental industry, we are nevertheless deeply concerned about the confusion and misconception about the rental concept which, undoubtedly will result in the minds of the public if the misnomer, "rental-purchase", and the wrongful, interchangable use of rental and lease, is allowed to perpetuate, initially in the bill, and subsequently in a major federal statute.

There now exists a timely opportunity to avoid such obscurity and achieve a high level of clarity in communication with the consumer, which after all, is the objective of any disclosure statute.

Suggested Amendment

To accomplish this, we propose that S.1152 be amended by substituting the term, "lease-purchase" for rental-purchase" in the title and throughout the bill.

General Comment

S.1152[2] recites a finding that there have been significant inadequate disclosure transactions,as justification for imposing federal disclosure requirements and regulation. We support fully the concept of full and fair disclosure as a sound business practice, preferably on a voluntary basis, but if necessary, then by state or federal law.

We have serious doubts that the record adequately reflects the need for federal legislation and regulation in this area of lease-purchase. Conceivably, the proposed legislation may not be beneficial to the consumer as assumed and could even be detrimental, if it tends to discourage the rapidly growing interest on behalf of consumers by the states. Such federal legislation might well preempt,*de facto*,if not *de jure*, regulation at the local state level.

A number of states have addressed, or are addressing, this issue. The proposals vary but they include, in addition to disclosure, substantive restrictions under existing law on transactions deemed to be credit sales, no matter what they are called.

Furthermore, some courts have also addressed perceived abuses in lease-purchase transactions. Although it is too early to determine a clear trend, the courts are beginning to address those situations involving disguised credit sales.[3/]

---

[2] Section 102(b)

Absent additional information, study and a supportive record, we believe it entirely appropriate and desirable to permit the states and courts to continue to respond to any abuses in this area, before the federal government assumes jurisdiction.

Administrative, legislative and judicial remedies at the state level may well provide greater protection against the perceived abuses than S.1152 which is now being considered.

Conclusion

In conclusion, we believe it essential that the term, "rental-purchase" in the bill be corrected to read, "lease-purchase" for the reasons stated. Also we have some reservations, as just explained, as to the sufficiency of the record, to support the finding and the wisdom of risking discouragement or *de facto* preemption at the state level by the passage of the "rental-purchase" provisions of S.1152.

Thank you for this opportunity to participate in the important work of your esteemed Subcommittee. We would be pleased to work with you and your staff on this legislation.

[3/] Hawkes v. Maine Bureau of Consumer Protection (Cumberland County Superior Court, Oct. 18, 1982) on appeal to Maine Supreme Court Docket # Cum-82-371. ("rent to own" agreement found to be disguised credit sale); Clark v. Rent-It Corp., 685 F.2d 245 (1982) (plaintiff may introduce evidence that lease of less than five months is disguised credit sale).

Senator HAWKINS. Mr. Neumann, I hate to interrupt, but the Senators and the committee have a copy of your full statement, and in the interest of time, as we do have another panel, would you mind if we interrupted you now so that we may ask questions?

Mr. NEUMANN. I don't mind at all.

INSURANCE COVERAGE ON RENTALS

Senator HAWKINS. Thank you. We're all on a fast track.

I'd like to ask you first, do you know if the companies that you're speaking for today carry insurance on the items that they rent?

Mr. NEUMANN. Insurance for theft, liability——

Senator HAWKINS. Breakage, whatever, any kind of insurance?

Mr. NEUMANN. There is insurance coverage for a portion of theft. There is always liability coverage; yes.

Senator HAWKINS. You said you rent many different kinds of items. Now, say, you rent a punchbowl and cups and a cup is broken. Do you receive compensation for the breakage of that cup?

Mr. NEUMANN. Frankly, in many cases, we will not charge for that cup, but we do have——

Senator HAWKINS. How about two cups?

Mr. NEUMANN. We will have a schedule for the cost of a piece of glass like that, a glass cup, and we would charge specifically what the cost is to replace it.

Senator HAWKINS. Is that the fair market price?

Mr. NEUMANN. No. It's generally our cost to replace.

Senator HAWKINS. So in the conversations that we've had earlier today about the inability to determine the fair market price, we may be able to determine fair market price as you do, the cost of replacement?

Mr. NEUMANN. I could respond to that question just slightly further. In our view, if a customer has the misfortune of breaking a cup, like in your example, we don't feel that we wish to take advantage of them by making a profit on their misfortunes, so we would normally charge them at a cost factor in lieu of list price.

Senator HAWKINS. Do you also collect from the insurance company?

Mr. NEUMANN. No.

Senator HAWKINS. You make no claim?

Mr. NEUMANN. No.

Senator HAWKINS. How large does the item have to be to collect insurance?

Mr. NEUMANN. In excess of $1.000.

Senator HAWKINS. In excess of $1,000?

Mr. NEUMANN. Right.

Senator HAWKINS. Senator Gorton, I have some other questions, but I would like to give you an opportunity.

Senator GORTON. I think we may have a little bit of a debate here between Mr. Choate and Mr. Neumann. I'm looking at pages 2 and 3 of Mr. Choate's testimony and page 4 primarily of Mr. Neumann's testimony.

Mr. Neumann, the thrust of your testimony is that your businesses are distinctly different, and yet, as I look at the points by which each of you characterize the kind of business in which you are engaged, they seem to me to be very much the same, with only a handful of differences, and so perhaps this question is for Mr. Choate.

Do you see a real distinction from the point of view of potential disclosure legislation from the kind of business in which your members are engaged and the kind of business in which Mr. Neumann's are engaged in?

Mr. CHOATE. Senator, the essential difference between our business and Mr. Neumann's business is that an additional service or option provided to the customer is ownership—potential ownership. Were you to remove the ownership possibility, in terms of the types of products we rent and the types of products Mr. Neumann rents, that would be the same and there would be no difference.

Senator GORTON. And is that the key difference in determining whether there should be Federal disclosure legislation?

Mr. CHOATE. Yes, sir.

Senator GORTON. That there should be if there is an ownership option and there should not be if there isn't?

Mr. CHOATE. Yes, sir.

Senator GORTON. Ms. Azzata would not agree with that proposition. She wanted us to go on and include pure rental agreements on the grounds that they were used in a deceptive and fraudulent manner with frequently oral representations of a right of gaining ownership. Could you comment on that?

Mr. CHOATE. I think that in the types of transactions that my clients and members of our organization engage in where ownership is an option in one form or another, that a total payment disclosure is an essential item of information that any consumer should have.

With regard to Mr. Neumann's customers, as he pointed out, that would be—and I won't speak for him—but I think that would be a near impossible figure to give and totally inappropriate because ownership is no option. How can you give the total payments if you never have the possibility of acquiring ownership? So I think with regard to his industry, these disclosures wouldn't be appropriate or that his clients and members of his organization should be subject to these types of disclosures.

Senator GORTON. I'd like Mr. Neumann to comment on that as well. Do you think the principal distinction between the two types of businesses is the possibility of ownership and that's the line which should be drawn in connection with the Federal disclosure statute?

Mr. NEUMANN. No. I believe the distinction falls in the direction that a rental is for a short, indeterminate period of time in lieu of a fixed period of time, like week, month, year. The customer has total control over exactly what their cost factor will be because they may return that item at any moment and stop their obligation.

Senator GORTON. Mr. Choate, do you agree with the recommendation that Mr. Neumann made that we should distinguish between these two kinds of transactions by calling one of them a rental and by calling the other one a lease?

LEASE-PURCHASE VS. RENTAL-PURCHASE

I do note that on page 3, after you described your business, you speak of short-term leases. Would the recommendation Mr. Neumann makes to define them as lease-purchase rather than rental-purchase in the statute itself be consistent with your views?

Mr. Choate. We have no objection to that at all, Senator. I would point out that the longest lease that I'm aware of in our industry is 1 month. There are no leases in the business of the members of the Association of Progressive Rental Organizations that exceed 1 month. They are typically 1 week or 1 month leases and the customer does know exactly what his cost for that rental or lease period is. It's the payment that he pays at the beginning of the lease and at the conclusion of the lease; he has no further obligation unless he chooses to renew it.

Whether it's called a rental-purchase or a lease-purchase, we are not concerned with that. As a lawyer, I prefer the term lease and in the contracts that I've written for the members of this association I represent. I have in fact used the lease terminology as opposed to renter. Renter is sort of a neutral term and you don't really know who you're talking about, and lessor and lessee I think is a more precise term.

Senator Gorton. Mr. McGregor, does that reflect your views as well, and do your terms not exceed a month?

Mr. McGregor. Well, I'll say this. If you have to take the word "rent" out of our operations, we have to change our name, all of our signs, all of our trucks, and all of our literature. Rent is part of our name and it's part of the name of half of our industry. I would not like to see that at all. I mean, you're talking about changing the whole image of an industry.

Senator Gorton. Thank you.

Senator Hawkins. Senator Dodd.

Senator Dodd. Thank you, Madam Chairman.

I don't want to dwell on that last point, but I would be curious for Mr. Neumann to respond to Mr. McGregor I suppose, but I was trying to think in my own mind whether there was any distinction in my mind between the word "rent" and "lease." You drive around this area and you find houses for rent all the time and I think it's a distinction without a difference really. You rarely see houses for lease, but clearly when you rent a house you assume they are going to do it for more than a month, too, or a longer term. So rental in that instance applies to some of the longer terms.

LEASES UNDER FEDERAL LAW

Anyway, I'd like to ask you, Mr. Choate, if I could, in your statement you talked about the problems that flow from the failures to put short-term leases under Federal law and my question is, do you think all leases, regardless of the length of time, whether they contain a purchase option or not, should be included under Federal law, with the exception of weekend kind of items?

Mr. Choate. Well, Senator Dodd, I think I'd like to point out that although our leases and our lease arrangements have an ownership option, there is no obligation to pursue the ownership option. In fact, all the obligations are to—there are no obligations. All the options are in favor of the consumer deciding not to assume ownership. If he decides to assume and renew, then either on a purchase for a set amount of money or after a term he will acquire ownership.

I think that where ownership is not one of the options open to the lessee that the disclosures in S. 1152 would not necessarily be appropriate. I can't say that the Federal Reserve Board or this committee or another body couldn't come up with disclosures in a rental that wasn't an ownership option environment that wouldn't be helpful to consumers. I'm not sure, though, that the disclosures through S. 1152 are directed toward that particular industry, which is Mr. Neumann's industry. In fact, all of my feelings from the Fed staff are that we have been dealing with the rental industry where one of the many services that is available to the lessee is ultimately, if he so chooses, to acquire ownership and, therefore, be free at that point from making lease payments or paying continually *ad infinitum* rent if he wants these particular items.

These are two separate areas and they probably require two separate types of disclosures. I'm not sure, but I'm not personally aware of any problems in the rental with nonownership option industry that are crying out for disclosures.

Senator DODD. In your statement you talked about the short-term leases, the problems of short-term leases not being included under Federal law, but I gather all of you agree that S. 1152 is a pretty good idea, with the exception that you have identified where you'd like to see improvements in the legislation. Am I correct in that?

Mr. CHOATE. Yes, that's our position.

Mr. MCGREGOR. [Nodding head.]

Senator DODD. You mentioned before and Senator Gorton asked the question of fair market value and it's a good question, and you gave a good answer about the difficulties associated with it. Senator Hawkins raised the question of insurance which raised a question in my mind.

While I appreciate the difficulties in determining fair market value and, again, I don't know whether this is commonplace or not, but I presume it might be in the case of your customers, Mr. McGregor, since they're in that income bracket of $25,000 or above where a lessor will insure even rented products in their homes or in their apartments or whatever, and have an insurance policy which will cover those kinds of situations. I would think that one of the problems might be in terms of determining what premiums would be and so forth. There ought to be some sort of a market value so they could protect themselves against theft or a loss of some kind or another.

DOUBLE DIPPING

It raises the further question that if there isn't that, of course, and something is lost, then the customer has paid already a significant amount of money, and I assume most of you would insure your inventory—in a sense, you almost have a double dip, both the money you collect from the lessor as well as whatever would be paid out under the policy, having lost that particular piece of your inventory. Would you comment on that?

Mr. CHOATE. To my knowledge, the inventory of our dealers is not covered by insurance. The risk of loss exists with the lessee during the term of the lease. Therefore, if there's a theft or a fire—and those are the only two possibilities really—because if the television set or the home appliance should break, of course, under our obligation to the lessee we would come in and repair it at no cost. Assuming fire and theft, which are the two most common, are the only two losses we're concerned about, if they have a renters insurance or homeowners policy, then their insurance policy would cover it and those are generally written in terms of fair market value of property. So we would have no problem.

With regard to the lessee who has no insurance, then that would be a matter, as in all circumstances, for negotiation between the parties. As I stated, if the parties could not reach an agreement, then the laws of all the States I know about provide for a determination by a court of what the obligation of the lessee would be.

So I'm not aware that we are collecting money from lessees and then making claims on our insurance. I believe that would be insurance fraud and I believe most of the policies, if we have those policies, would provide—or the ones I have seen, provide if you collect other insurance, then the insurance company is subrogated to your right against the lessee or whoever owes you the money.

Senator DODD. Is that true, Mr. McGregor, that you don't retain insurance on leased equipment?

Mr. MCGREGOR. Generally speaking, no. Furniture rental companies offer a waiver of responsibility in case of fire or windstorms or any type of thing like that, but not against a theft or disappearance. This waiver is simply waiving the customer's responsibility and there's a small charge in the contract for it which, as far as I know, is spelled out to the dollar in all of our contracts.

Senator DODD. What would you call that?

Mr. MCGREGOR. We call it a waiver of responsibility.

Senator DODD. Not insurance?

Mr. MCGREGOR. No. It's in lieu of insurance.

Senator DODD. Well, you have to agree that it's still a form of insurance in effect. You're protecting yourself against that loss.

Mr. MCGREGOR. You're asking what would be the value if something happened, like it burned up?

Senator DODD. Sure.

Mr. MCGREGOR. And how would we value it?

Senator DODD. Yes.

DETERMINING FAIR MARKET VALUE

Mr. MCGREGOR. Theres' a lot of difference in that in the industry, but it's generally related to fair market value.

Senator DODD. Well, how do you determine that prior to the time?

Mr. MCGREGOR. In our particular case we put fair market value on every item right on the contract.

Senator DODD. You do?

Mr. MCGREGOR. Yes.

Senator DODD. Why is that a difficulty in these other areas?

Mr. CHOATE. Senator, we think it would not be in the interest of the consumer, for example, if we were to have a television set that in the first lease term had a fair market value of $750 and we put that down as the fair market value, and then if a theft were to occur 14 months later, a $750 value would be the responsibility of that lessee. We think it's much more equitable for the consumer to have fair market value be the value of the item at the time he should be so unfortunate to suffer the loss. We use the term fair market value, because although it is vague, it is one of those terms that the law recognizes is vague for a purpose.

Senator DODD. What if you're going to collect insurance? The lessee wants to cover himself and he's paid a lot of money out and he may be 9 months into the lease and someone comes in and steals his TV and the insurance company says what is the fair market value at the time of the agreement. They're not going to ask what the fair market value is at the time of the theft.

Mr. CHOATE. My experience with the insurance companies under those circumstances is that they would pay the fair market value at the time of the theft, not the fair market value at the time that the property was new, and what they would do is then come in and make a factual inquiry as to the amount of time that you leased it as best they could to try to determine the quality of the merchandise at the time of the loss and then, based on that, they would make a totally, as objective as possible but generally subjective determination as to what they would pay you under the policy. And if you disagree with them, then you resort to other processes.

And it seems to me that in terms of fairness to the consumer that would be the most appropriate way to do it.

Senator DODD. I appreciate your answer. I'm not quite sure I characterize it that way, but that's a nice way of describing it. Those are all the questions I have. Thank you.

Senator HAWKINS. Mr. Choate, you're a representative of appliance firms in general, are you not, not just TV's?

Mr. CHOATE. Yes, ma'am. Our members represent a full range of, as I stated in my testimony——

Senator HAWKINS. Stoves, refrigerators, dishwashers, washers, dryers, freezers?

Mr. CHOATE. Yes, ma'am, and also video recorders and various items such as that, a full range of home appliances and consumer goods.

Senator HAWKINS. Is there a universal contract form that your members use?

Mr. CHOATE. No, ma'am, there is not.

Senator HAWKINS. So everybody makes up their own?

Mr. CHOATE. There's a general pattern, but they will differ from company to company.

Senator HAWKINS. Could we have a copy of that? Did we get a copy?

Mr. CHOATE. If you did not, we would be more than happy to supply some contracts.

Senator HAWKINS. And is it stated clearly that if it's stolen or lost in fire, et cetera, that it is the lessee's responsibility?

Mr. CHOATE. Yes, ma'am.

[Copies of various contracts supplied for the record follow:]

LAW OFFICES
ABRAMS, KOVACS, WESTERMEIER & GOLDBERG, P.C.
SECOND FLOOR
1735 K STREET, N. W.
WASHINGTON, D.C. 20006
(202) 785-2050

LAWRENCE I. ABRAMS
J. T. WESTERMEIER, JR.
JAMES M. GOLDBERG
WILLIAM L. KOVACS

August 11, 1983

The Honorable Paula Hawkins
Chairman
Subcommittee on Consumer Affairs
Committee on Banking, Housing and
Urban Affairs
SD-534 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Hawkins:

As General Counsel for the Furniture Rental Association of America, I am taking the liberty of responding to your July 20 letter to Robert S. McGregor, FRAA's President.

Enclosed, as you requested, are examples of lease agreements utilized by FRAA members. Some are from companies which write leases covered by the federal Consumer Leasing Act and some are from firms which have a policy of not writing leases with an initial period of more than four months.

We are not able at this time to supply an answer to your second question, i.e., a "breakdown of costs in a typical appliance lease with an option to buy." First of all, few FRAA members rent appliances and those which do generally do so only as part of a furniture package, as was explained in the FRAA testimony. Second, I am not sure that there is a "typical" transaction which would serve as a proper example. Third, and probably most important, this kind of information is not readily available from FRAA members because of its highly proprietary nature. FRAA members are quite naturally most reluctant to disclose sensitive financial information of this type, particularly since the Committee is not in a position to guarantee confidentiality.

However, I will be happy to discuss certain publicly-available financial data with you or members of your staff.

We look forward to working with you on the development of the Consumer Lease and Rental Purchase Agreement Act.

Cordially,

James M Goldberg

James M. Goldberg

Enclosure

3335

globe INTERIOR RENTALS, INC.

WAREHOUSE & SHOWROOM • 1100 East Maple Road, Troy, Michigan 48084 • 588-1800

FIRST MONTH'S RENT		
PRO-RATED RENTAL		
SECURITY DEPOSIT		
DELIVERY CHARGE		
TOTAL DUE		

DATE ______________ BUS. ______________

LEASED TO ______________ PHONE RES. ______________

ADDRESS ______________ APT. OR SUITE NO. ______________

CITY: ______________ ZIP CODE ______________

DELIVER TO ______________

ADDRESS ______________ APT. OR SUITE NO. ______________

CITY: ______________ ZIP CODE ______________

APT. OR BLDG. NAME ______________

DELIVER WHEN

REFERRAL ______________

SALESMAN ______________

	QTY		MANUFACTURER	NUMBER	COVER	ITEM
						SOFA
						CHAIR
						LOVESEAT
						COCKTAIL
						END TABLE
						LAMP
						FRAME
						MATTRESS
						BOX SPRING
						HEADBOARD
						TRP. DRESSER
						DBL. DRESSER
						MIRROR
						CHEST
						N. STAND
						LAMP
						DINING TABLE
						DINING CHAIRS

– TERMS –

The term of this lease shall be for ____ months commencing on ______________, 19____. Payable at the rate of $______________ per month ~~and each such day of every consecutive month there~~after for the term of this lease. If period of lease is not fulfilled, lessee shall be responsible for total value of lease or short term rates shall apply as follows:

3 Months	75% Additional	6-7 Months	40% Additional
4 Months	60% Additional	8-9 Months	20% Additional
5 Months	50% Additional	10-11 Months	10% Additional

Minimum term shall be three (3) months.

1. TITLE TO FURNITURE. Title to the furniture shall remain in the possession of Lessor, and, during the term hereof, the furniture shall remain personal property irrespective of its use or manner of attachment to realty.

2. DEFENSE AND PROTECTION OF TITLE. The Lessee, at its own cost and expense, shall protect and defend the Lessor's title to the furniture. The Lessee shall keep the furniture free and clear from all levies, attachments, liens, encumbrances and charges or other judicial process of every kind whatsoever but, in the event of such, shall give Lessor immediate written notice thereof and shall indemnify and save the Lessor harmless from any loss or damage caused thereby.

3. LOCATION OF FURNITURE. The furniture shall be located at the Lessee's address set forth above and such location shall not be changed without the prior written consent of Lessor. If delivery of furniture is made when Lessee is not present, Lessee shall assume all responsibility for damage, servicing, or shortages unless Lessor is notified within three days after delivery of same.

4. At the termination of this agreement, the Lessee(s) shall return to the said GLOBE INTERIOR RENTALS, INC., the aforesaid property in the same condition and repair in which it now exists (on the date of the execution of this agreement), normal wear and tear excepted, and deposits of $ as security therefor, the receipt of which is hereby acknowledged. Said deposit to be returned to the said Lessee(s) at the termination of this agreement, provided that the performance of all the terms and conditions herein and hereafter mentioned are satisfied and furniture has been returned to GLOBE INTERIOR RENTALS, INC.

NOTICE TO BUILDING MANAGER OR OWNER:
I HEREBY GRANT GLOBE INTERIOR RENTALS, INC., PERMISSION TO PICK UP LEASED FURNITURE AT THE CONCLUSION OF MY LEASE OR SOONER IF LEASE TERMS ARE NOT FULFILLED. I FURTHER AUTHORIZE BUILDING OWNER, OR HIS REPRESENTATIVE, TO PERMIT ACCESS TO AND TO RELEASE SAID FURNITURE TO GLOBE INTERIOR RENTALS, INC., AND HOLD SUCH OWNER, OR REPRESENTATIVE HARMLESS FOR THIS ACTION.

SIGNED X ______________

LATE CHARGE NOTICE – PAYMENTS RECEIVED 6 DAYS AFTER DUE DATE ARE SUBJECT TO A $5.00 LATE CHARGE.

PLEASE INITIAL X ______________

WAIVER

IT IS AGREED, THAT FOR THE CONSIDERATION OF
PER MONTH IN ADDITIONAL RENTAL, PARAGRAPH 6, ITEM (A) OF THE ATTACHED LEASE IS MODIFIED TO ADD AS FOLLOWS: LESSOR SHALL BEAR ALL RISK OF DAMAGE OR DESTRUCTION OF THE FURNITURE DESCRIBED ON THE ORIGINAL DELIVERY SCHEDULE, FROM WHATEVER CAUSE OR SOURCE ARISING, EXCEPT SUCH AS MAY HAVE RESULTED FROM THE INTENTIONAL OR WILLFUL ACT OR OMISSION OF THE LESSEE OR THEFT.

PLEASE INITIAL X ______________

LESSEE(S) X ______________

X ______________

DATE ______________

LESSOR: GLOBE INTERIOR RENTALS, INC.

5. ADDITIONAL RESPONSIBILITIES OF LESSEE. It shall be the Lessee's responsibility

(a) to maintain the furniture, to keep it in good condition, and to relinquish it to the Lessor when required hereunder in as good condition as when received, ordinary wear and tear excepted.

(b) to retain the Lessor's identification label on the furniture;

(c) to pay or to indemnify and hold the Lessor harmless from all taxes and assessments which may be levied, directly or indirectly against the furniture, any interest therein or the use thereof during the term of this lease, whether said taxes be levied against the Lessor or the Lessee;

(d) to indemnify and hold the Lessor harmless from any and all claims, costs, expenses and damages resulting from, or arising out of, the use of the furniture during the term hereof or while the furniture remains in Lessee's possession;

(e) not to assign the Lessee's rights or delegate the Lessee's duties hereunder without the prior written consent of the Lessor.

6. DEFAULT. Time is of the essence of this lease. Unless otherwise designated, payments are due and payable on the first day of the current month. Payments may not be withheld because of shortages or service problems beyond Lessor's control. If the Lessee fails to perform any of its obligations or responsibilities under this lease, including the failure to pay any monthly installment of taxes as it becomes due, then the Lessor, in addition to any other remedies available to it, may terminate this lease and take possession of the furniture without legal process and without notice or demand to the Lessee: such notice and demand being hereby expressly waived by the Lessee. In the event of any such termination by the Lessor, all rights of the Lessee under this lease shall cease and the Lessee shall have no further right to the furniture. Three (3) late payments are considered to be a chronic late payment condition and is a breach of the contract. Any check tendered that is returned by the bank constitutes default under terms of this contract. Lessor's waiver of any specific breach is not a continuing waiver nor a waiver of any other breach.

7. REPRESENTATIONS OF LESSOR. The Lessor represents to the Lessee that the Lessor is the lawful owner of the furniture, and that upon Lessee's complying with the terms and conditions of this lease, the Lessee shall peaceably and quietly hold, possess and use the furniture during the term of this lease without hindrance.

8. DISPOSITION OF FURNITURE UPON EXPIRATION OF TERM. Upon the expiration of the terms of this lease, and if this lease is not extended or renewed by mutual agreement of the parties. Lessee shall notify [illegible] days prior to pick up where the furniture is located and when it is to be picked up. Pickup charges shall be equal to delivery charges.

9. SEPARABILITY CLAUSE. If any provisions of this lease are in conflict with any statute or rule of law of any state or any territory wherein it may be sought to be enforced, then such provision shall be deemed null and void to the extent that it may conflict therewith, but without invalidating the remaining provisions hereof.

10. We require ten (10) days notice for pick-up of furniture [illegible] to our warehouse. Any charge for damages over and above ordinary wear and tear as described in paragraph five shall be deducted from Security Deposit.

11. EXTENSION. At the expiration of the initial terms of this lease, this lease shall be extended thereafter from month to month on the same terms and conditions as stated herein until either party sends a ten (10) day notice of termination to the other party at its address stated herein.

12. OPTION TO BUY. The Lessee, may at his option, purchase the furniture at any time during the term of this lease. Lessee will [illegible] for the first twelve (12) payments only.

13. This lease constitutes the entire agreement and understanding between Lessor and Lessee. There are no conditions or limitations to this agreement except those in writing.

PURCHASE OPTION
12 months rental applied
to purchase option

California
Furniture
Rental
Corp.

OFFICE AT ____________________ CITY ____________________
PHONE ____________________

FURNITURE LEASE AGREEMENT

ANY ALTERATIONS OR
CHANGES AFTER DELIVERY
WILL BE SUBJECT TO
A $25.00 SERVICE CHARGE

Name(s) of Lessee ____________________ Date: ____________
Lessee's address ____________________ Apt. #: ____________ Off. No. ____________
____________________ Zip Code ____________ Prep. ____________

Monthly rental $____________ Commencement date: ____________ County Code: ____________
Waiver fee $____________ Bus. Source: ____________
Del Chg $____________ Rental paid to: ____________ Day of Week: ____________
Other Chg $____________
Total $____________ Regular Monthly Payment (rent & waiver) ____________ Pmt. Due Date: ____________

IT IS MUTUALLY AGREED THAT:

1 Lessor does hereby lease and Lessee hereby rents those certain items of furniture as described in the attached Furniture Rental Description Sheet for a term starting on the commencement date above specified. The initial term of this lease shall end thirty (30) days following the commencement date and shall continue from month to month until terminated by either party under the provisions hereinafter set forth.

2 The above described furniture shall be furnished to or delivered to Lessee at the place, on the commencement date set forth above.

3 Lessee agrees to pay as monthly rental to Lessor the sum specified above in advance and without demand on or before the commencement date of this lease and each monthly anniversary thereof, and until the same shall be terminated as is hereafter provided. All monthly payments shall be made by Lessee at Lessor's office shown above, or at such other office as Lessor may specify in writing.

4 In the event the Lessee is more than five days delinquent in paying said monthly rental a late charge will be assessed at the rate of $2.50 after the first five days, an extra $2.50 after the second five days plus $1.00 per day after the tenth day but this charge will not be more than $25.00 in any 30 day period. A $10.00 service fee will be assessed on all returned checks

5 Lessee shall bear all risk of damage, loss, theft, pet damage, or destruction of the furniture described herein, from whatever cause or source arising, and shall return the same to Lessor at the termination of this lease in good condition, excepting only deterioration caused by normal wear, and Lessee further agrees to pay Lessor the cost of restoring any damaged furniture to good and usable condition. Lessor shall have the privilege of inspecting the leased furniture at reasonable times. In the event that in the reasonable judgement of Lessor the leased furniture is being abused, damaged or misused, Lessor may elect to terminate this lease and take possession of the leased furniture forthwith. Such termination shall create no right in Lessee to a refund of prepaid rent, if any, nor shall it extinguish Lessor's right of compensation for such damage or for unpaid rental.

6 Lessor requires Lessee to pay a Delivery Charge of $50.00, receipt of which sum is acknowledged by Lessor. Said charge shall not be returned to the Lessee.

7 Any failure by Lessee to comply with any of the terms or conditions herein shall entitle Lessor, at its option, and without notice, to terminate this agreement and enter upon the said premises or wherever the said furniture may be found, and retake possession of the same without liability to Lessor on account of such retaking. In the event suit or action be instituted to enforce any provision of this lease, Lessee agrees to pay such sum as the Court may adjudge reasonable as attorney's fees, in such suit or action. Lessee agrees any such action may be litigated in the city where this lease is signed or where Lessor has its executive offices at the time of default.

8 This agreement represents the entire agreement of the parties and no provision thereof may be waived except by instrument in writing signed by both of the parties. The invalidity of any part of this agreement will not affect the remainder thereof.

9 LESSEE MAY TERMINATE THIS LEASE FOLLOWING THE INITIAL TERM THEREOF BY GIVING LESSOR THIRTY (30) DAYS NOTICE IN WRITING TO SUCH EFFECT. In such event, all rentals shall be fully paid by Lessee to and including a date thirty (30) days following the postmarked date of mailing by Lessee of such notice, and Lessee shall surrender said leased furniture to Lessor at the end of such 30 day period. ________

10 THE FURNITURE LEASED HEREUNDER MAY ONLY BE USED IN THE OCCUPANCY OF THE ABOVE DESCRIBED APARTMENT OR LIVING UNIT. The furniture may not be removed from said premises by Lessee nor may Lessee assign this lease, sublet or attempt to sublet any portion thereof, or permit or allow the leased furniture to come in the possession of any third party without Lessor's prior written consent. ________

11 HOUSEKEEPING PACKAGE OPTION. Lessee agrees to rent housekeeping package for minimum of three (3) months, or pay equivalent rental ________

ACCEPTANCE OF THIS AGREEMENT IS SUBJECT TO CREDIT APPROVAL.

IN WITNESS WHEREOF, the parties have caused the instrument to be executed the date and year first above written.

____
Lessee

CALIFORNIA FURNITURE RENTAL CORP.

____
Lessee

BY ____________________
Lessor

WAIVER

It is agreed that, for a consideration of $____________________ per month in additional rental, paragraph 5 of this lease is modified to read as follows:

Lessor shall bear all risk of damage, or destruction of the furniture described herein, from whatever cause or source arising, except such as may have resulted from pet damage, theft or intentional or willful act or omission of the Lessee. This lease shall terminate with respect to any furniture destroyed as of the date of destruction. Lessee agrees to return the furniture herein described to Lessor forthwith at the termination of this lease, in good condition excepting only deterioration caused by normal wear, and loss, damage or destruction arising from causes as to which the risk is borne by the Lessor. Lessor shall have the privilege of inspecting the leased furniture at reasonable times. In the event that in the judgment of Lessor the leased furniture is being abused, damaged or misused, from any cause whatsoever, including causes as to which Lessor bears the risk, Lessor may elect to terminate this lease and take possession of the leased furniture forthwith. Such termination shall create no right in Lessee to refund of prepaid rent, if any, nor shall it extinguish any right that Lessor may have for compensation for such damage or for unpaid rental.

CALIFORNIA FURNITURE RENTAL CORP.

By ____________________
Lessor

ADM001 9/80

Glicks Furniture Rental

GENERAL OFFICES
1080 WEST THIRD AVE.
COLUMBUS, OHIO 43212
PHONE: 614-294-6224

3 COLUMBUS LOCATIONS
☐ 1070 W. THIRD AVE. 43212
PHONE 614-294-6224
☐ 2473 E. DUBLIN-GRANVILLE RD. 43229
PHONE: 614-891-3050
☐ 1735 BRICE RD. 43068
PHONE: 614-864-8869

2 INDIANAPOLIS LOCATIONS
☐ 7247 N. KEYSTONE AVE. 46240
PHONE: 317-257-7318
☐ 6022 CRAWFORDSVILLE RD. 46224
PHONE: 317-247-9153

Written by: ____________

Name of Apartment: ____________ Referred by: ____________ Acct. Type ______

RENTAL CONTRACT

Date: ____________ Acct. ____________

This agreement dated as stated above between GLICK'S FURNITURE RENTAL INC. (hereinafter sometimes called "Lessor") and ____________

(hereinafter sometimes called "Lessee"). For value received, the Lessor agrees to lease to the Lessee the furniture listed on the attached inventory(ies) enumerated in paragraph 10, below, together with all additions and replacements.

1. **Lessee's Address:**
Street ____________ Apt. # ______
City ____________ State ____________ Zip Code ______

2. **Rental Schedule**
a. Basic Rent $______
b. Sales Tax $______
c. Waiver Fee $______
d. Total Monthly Payment $______

3. **Receipt**
a. Prorated Current Rent $______
b. First Full Month's Rent $______
c. Security Deposit $______
d. Other ____________ $______
e. Installation Charge $______
f. Total Due $______
g. Paid: Cash/Check # ______ Visa/M.C. $______
h. Balance Due Before Delivery No Later Than ___/___/___ $______

4. **Delivery Date**

5. **RESPONSIBILITY WAIVER AGREEMENT:** It is agreed that for the consideration of the amount enumerated on line "c" of the "Rental Schedule", above, paragraph (19) item (a) of this lease is modified to add as follows:

"Lessee shall not be liable for damage or destruction of the furniture described on the original inventory(ies) and any amendments thereto, with the exception of TV sets and appliances, from whatever cause or source arising, except such as may have resulted from the intentional or willful act or omission of the Lessee, malicious damage, theft, or damage caused by pets."

NOTICE: THE RESPONSIBILITY WAIVER AGREEMENT AND MODIFICATION OF CLAUSES SHALL BE VALID ONLY IF LESSEE HAS TIMELY PAID ALL REGULAR MONTHLY PAYMENTS, INCLUDING RESPONSIBILITY WAIVER FEE, AND IS NOT IN DEFAULT UNDER ANY OTHER PROVISION OF THIS AGREEMENT DURING ITS TERM.

If Responsibility Waiver Agreement is not desired, Lessee must provide insurance binder as described in paragraph (32) (e), and initial here indicating that Lessee understands that all damage, destruction, or loss to the furniture described in paragraph (19) (a) is Lessee's responsibility.

WAIVER DECLINED (please initial) X______

6. **LATE PAYMENT PENALTY CHARGE NOTICE:** Payments received 6 days after the due date are subject to a $3.50 late payment penalty charge, plus 50¢ per day additional penalty charge for each day thereafter, until paid in full. Unless payment is made in full, the provisions of paragraph (21) apply and late charges will continue to accrue until the account is fully paid.

(please initial) X______

7. **ADDITIONAL CHARGES NOTICE:** I understand that I must pay a fee, equal to the installation charge (line (3) (e) of the Receipt section, above) for pick up if I do not rent the furnishings for a minimum period as specified in paragraph (23) on the reverse side hereof. I also understand a credit service charge of $10.00 will be made in the event I cancel this order before delivery. A $10.00 service charge will be added for any check returned by Lessee's bank for any reason. This returned check service charge is in addition to any late charges which may also be applied.

(please initial) X______

8. **TERM OF LEASE:** The term of this lease shall be for ______ months, commencing on the first day of ____________, 19____

A monthly payment of $____________ **IS DUE IN ADVANCE ON THE FIRST DAY OF EACH AND EVERY CONSECUTIVE MONTH DURING THE TERM OF THIS LEASE.** Notwithstanding anything to the contrary contained herein, if the furniture leased is used for personal, family, or household purposes, the aforementioned term shall be for not more than three (3) months. Upon expiration of the above mentioned term of lease, this lease shall continue on a month to month basis, unless terminated by either party, by giving one month's advance written notice.

9. **USE:** The furniture covered by this lease shall be used by the Lessee for (check one) ☐ commercial purposes ☐ personal, family, or household purposes.

10. **LEASED PROPERTY:** The property leased hereunder (the "furniture") is described on the attached inventory(ies) numbered ______, ______, ______, attached hereto and made a part hereof.

11. All of the terms and conditions of this contract including those above and THOSE ENUMERATED BELOW AND ON THE REVERSE SIDE HEREOF, (numbered 12 thru 32) are agreed to:

LESSEE(S) X____________

X____________

Final agreement by Lessor subject to credit approval.

Credit approved: ______

12. **TITLE TO FURNITURE.** Title to the furniture shall remain in the Lessor: and during the term hereof, the furniture shall remain personal property irrespective of its use or manner of attachment to realty, provided, however, that the Lessee shall not cause or permit the furniture to be attached to realty in such a manner that it might become part of such realty without securing the prior written consent of the Lessor, and the prior written agreement of the owner of the realty and of any mortgagee of such realty that the furniture shall remain personal property, and may be removed from the realty at the option of the Lessee or the Lessor.

13. **DEFENSE AND PROTECTION OF TITLE.** The Lessee at its own cost and expense shall protect and defend the Lessor's title to the furniture. The Lessee shall keep the furniture free and clear from all levies, attachments, liens, incumbrances, and charges, or other judicial process of every kind whatsoever, but in the event of such shall give Lessor immediate written notice thereof, and shall indemnify and save the Lessor and will take or permit whatever action may be necessary in order to enable the Lessor to file, register, or record, and refile, reregister or rerecord this lease in such office as Lessor may determine for the protection of the Lessor's title to the furniture: the Lessee will pay all costs, charges, and expenses incident thereto.

14. **LIABILITY OF LESSOR.** Lessor shall not be liable to the Lessee, members of Lessee's family, or any persons Lessee permits near, on, or about leased property as a result of any injury sustained by any such person in connection with their use of the leased property.

15. **LOCATION OF FURNITURE.** The furniture shall be located at the Lessee's address as set forth in the "Deliver to" section of the attached inventory(ies), as enumerated in paragraph (10) hereof, and such location shall not be changed without the prior written consent of the Lessor.

16. **MAINTENANCE.** The Lessee is responsible for the following maintenance of the leased furniture; cleaning, repair of minor damage from ordinary use and any damage caused by pets. The Lessor is responsible for the following maintenance of the leased furniture; repair of major construction defects from ordinary use if, without repairs, the furniture is not functional.

17. **RIGHT TO INSPECTION AND REMOVAL.** At all reasonable times, after 24 hours advance notice during the term hereof, the Lessor may, for the purpose of inspection, enter upon the premises of the Lessee where the furniture is located. Any unreasonable denial of the above right to inspect the furniture may be deemed a default under

this agreement, [illegible] Lessor determines that the furniture is not being used for the purpose intended, or that the furniture has been grossly mistreated or abused or that the furniture has been improperly cared for, the Lessor may remove the furniture from the Lessee's premises and the Lessee hereby gives consent to the Lessor for such removal, without notice to the Lessee and without legal process, and agrees that he, the Lessee, shall have no further right to the furniture and shall be responsible to the Lessor for all costs reasonably incurred by the Lessor in effecting such peaceful removal of the furniture. In the event of such removal all rights of the Lessee under this lease shall cease, and the Lessee shall have no further right to the furniture. The Lessor shall then have all rights under paragraph (20), DEFAULT, below.

18. **LOSS OR DESTRUCTION OF FURNITURE.** If the leased furniture is destroyed, stolen, or is damaged to such an extent that Lessee finds it undesirable, or finds it impossible to continue its use, Lessee shall forthwith pay, to the Lessor, the remaining unpaid rental payments thereon, and the fair market value (prior to loss or damage) of the property.

19. **ADDITIONAL RESPONSIBILITIES OF LESSEE.** Lessee shall be responsible to Lessor:

(a) for any and all damage destruction or loss of the furniture howsoever caused, and shall return the furniture to the Lessor promptly upon termination of this agreement in the same condition as it was when delivered to the Lessee (normal wear and tear from authorized use excepted) or to pay Lessor the cost of repair or replacement.

(b) to retain the Lessor's identification label or other indicia of ownership on the furniture.

(c) to pay or indemnify and hold Lessor harmless from all taxes and assessments which may be levied directly or indirectly against the furniture and any interest therein or the use thereof during the term of the lease, whether said taxes be levied against Lessor or Lessee, including without limitation all sales tax imposed or to be imposed during the term hereof, and all extensions and renewals thereof by the state or other taxing authority having the lawful authority to impose taxes in the geographical location where the furniture is to be kept, at such rates of taxation as may from time to time be established by said state or other taxing authority.

(d) to indemnity and hold Lessor harmless from any and all claims, costs and expenses and damages resulting from or arising out of the use of the furniture during the term hereof and all extensions and renewals thereof or while the furniture remains in the Lessee's possession, including attorney's fees where and to the extent permitted by law, and to maintain insurance coverage acceptable to the Lessor on the furniture, unless the Lessor waives this provision as a result of the Lessee purchasing the Responsibility Waiver, specified in this agreement as a separate paragraph 5), called: "Responsibility Waiver Agreement."

(e) to send immediate written notice to the Lessor of any substantial damage to all or any portion of the furniture.

(f) not to assign the Lessee's rights or to delegate the Lessee's duties hereunder without the prior written consent of the Lessor.

(g) to return the furniture to the Lessor at the conclusion of this agreement or upon demand in the case of default.

20. **DEFAULT.** Time is of the essence of this lease. In the event the Lessee's interest in any item of furniture shall be levied upon, or taken in execution, or subjected to other incumbrances; or in the event the Lessee becomes insolvent or bankrupt or makes an assignment for the benefit of creditors or consents to the appointment of a trustee or a receiver, or a trustee or receiver is appointed for the Lessee, or a substantial part of the Lessee's property without the Lessee's consent, or if bankruptcy reorganization, arrangement, insolvency, or liquidation proceedings are instituted by or against the Lessee, or if the Lessee fails to perform any of its obligations or responsibilities under this lease, including the failure to pay any monthly installment of the rental as it becomes due, or any installment of taxes as it becomes due, and if such failure continues for a period of thirty (30) days, then the Lessor, in addition to any other remedies available to it may terminate this lease and take possession of the furniture without legal process and without notice or demand to the Lessee; such notice and demand being hereby expressly waived by the Lessee. In the event of any such termination by the Lessor, all rights of the Lessee under this lease shall cease; and the Lessee shall have no further right to the furniture. Upon such termination, if it occurs within three (3) months after commencement of this lease, Lessee shall be liable for, in addition to all past due rental payments, an additional one month's rental payment as liquidated damages. In addition, the costs and expenses of the removal and transportation of the furniture to the Lessor's premises shall be borne by the Lessee.

21. **APPLICATION OF DELINQUENT PAYMENTS.** Lessor shall apply payments received in a delinquent situation first to late charges before any payment of rent shall take place. A $10.00 service charge will be added to each account for any check returned by Lessee's bank for any reason.

22. **WARRANTIES OF THE LESSOR.** Lessor warrants to Lessee the Lessor has the right to lease the furniture, and that upon Lessee's complying with the terms and conditions of the lease, Lessee shall peaceably and quietly hold, possess, and enjoy the use of the furniture during the term of the lease and all extensions and renewals thereof without hindrance. Beyond this Lessor makes no warranties, expressed or implied as to the furniture, and specifically EXCLUDES ANY WARRANTY OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE or similar warranty that may impliedly be made of a Lessor to a Lessee. Further Lessor shall not be liable for special or consequential damages under this Agreement in any case.

23. **DISPOSITION OF FURNITURE UPON EXPIRATION OF TERM.** Upon the expiration of the term of the lease, and if the lease is not extended or renewed by mutual agreement of the parties, and Lessor determines to remove the furniture from the Lessee's possession, the costs and expenses of such removal shall be borne and paid by the Lessee. If the Lessee leases for or renews, or extends this lease beyond four months duration, transportation charges for the return of the merchandise at the expiration of the lease shall be borne by the Lessor. If the actual lease period is for less than four months' duration the Lessee will pay the transportation charges for the return of the merchandise to the Lessor's warehouse, the amount being the same as charged on line e of the "receipt" section, on the front side hereof. All terms and conditions of this lease shall apply and both parties shall be bound by them until such time as the furniture has been physically received by the Lessor or his authorized agent or the Lessor has given the Lessee written release from the obligations incurred as Lessee under the provisions of this contract.

24. **SEPARABILITY CLAUSE.** If any provisions of this lease are in conflict with any statute or rule of law of any state or any territory, which statute or rule of law may be applicable to the terms of the lease, then such provisions shall be deemed null and void to the extent that it may conflict therewith, but without invalidating the remaining portions hereof.

25. **RENT AFTER BREACH.** Except whereby mutual agreement this lease is terminated prior to the expiration date, Lessee may be HELD RESPONSIBLE FOR PAYMENT IN FULL OF BALANCE OF LEASE REMAINING UNPAID SUBJECT HOWEVER TO PARAGRAPH (28) HEREOF.

26. **NOTICE OF TERMINATION/DAMAGE.** Lessor requires thirty (30) days advance written notice for pick up of the furniture for return to its warehouse. At the termination of this agreement, of earlier in the event of a breach, the Lessee shall return to Glick Furniture Rental, Inc., the aforesaid property in the same condition and repair in which it now exists (on the date of the execution of this agreement), normal wear and tear excepted, and the Lessee has deposited with the Lessor the amount enumerated on line c of the "receipt section" on the front hereof, as security therefore, the receipt of which is hereby acknowledged. Said deposit to be returned to said Lessee at the termination of this agreement, providing that the performance of the terms and conditions herein and hereinafter mentioned are satisfied and the furniture has been returned to Glick Furniture Rental, Inc. Said deposit may not be utilized by Lessee as rent payment or shall not be considered prepaid rent.

27. **TRANSPORTATION CHARGES FOR ADDITIONAL TRIPS.** For exchanges, partial pick ups, partial deliveries, or if, through no fault of Lessor, an additional trip or trips must be made to effect delivery or pick up of the furniture because Lessee did not make proper arrangements for receipt or pick up of the furniture, an additional charge equal to the cost actually incurred by the Lessor may be charged to Lessee for each such additional trip.

28. **MITIGATION OF DAMAGES.** Anything in the lease to the contrary notwithstanding, Lessor shall have the duty to mitigate the damages of the Lessee as hereinafter provided. If during the term of the lease, Lessee abandons the furniture and the premises at which the furniture is located, and Lessor is able to re-lease the furniture on said premises, as of the 1st of the month following such abandonment and vacation, to the new occupant of such premises, on terms then generally being extended by the Lessor, it shall do so, and Lessor's damages shall be its actual damages incurred in so re-leasing the furniture. If Lessor is unable, after making a commercially reasonable effort to do so, to so re-lease the furniture, it shall be under no duty to re-lease the furniture so long as it has available to it a local supply of merchandise substantially similar to the furniture. If Lessor does not have such a local supply of such merchandise available to it, it shall have the duty to attempt, in a commercially reasonable manner, to re-lease the furniture upon its then current rental terms, as soon as possible. Lessor shall have no duty to ship the furniture to any other area in the country in which it does business in order to mitigate Lessee's damages hereunder unless Lessee shall elect to, and actually pay such shipping costs in advance. So long as Lessor has attempted to mitigate damages as provided herein, Lessee shall be responsible for all actual costs and other damages reasonably incurred by Lessor, including, without limitation, lost rent, transportation expense, storage charges, attorney's fees where and to the extent permitted by law, and all other expenses reasonably incurred by Lessor by virtue of Lessee's breach of the lease or otherwise.

29. **DELIVERY DATE.** In consideration of the amount enumerated on line a of the "receipt section" on the front hereof, the Lessor agrees to deliver the furniture on the specified delivery date, and all conditions and provisions of this lease shall become effective on that date, otherwise the furniture will be delivered on the first or second working day of the month enumerated as the beginning month of the contract in paragraph (8), Term of Lease, on the reverse side hereof.

30. **CREDIT REPORTS.** The Lessee agrees that the Lessor is authorized to investigate Lessee's credit record and report to proper persons and bureaus his performance under this lease.

31. **NOTICE.** Any notice required to be given by Lessee shall be in writing and sent by ordinary mail to Lessor at its address set forth on the front side hereof. Any notice required to be given by the Lessor shall be proper if in writing and sent to Lessee by ordinary mail to Lessee's billing address as set forth on the front side hereof.

32. **ADDITIONAL COVENANTS OF LESSEE.** Lessee agrees:

(a) that no representation, warranty, or guarantee has been made to Lessee which is not expressly set forth herein and that the lease contains all of the terms of the agreement between the Lessee and the Lessor;

(b) not to assign his, her, or their interest in the lease or the furniture without the prior written permission of the Lessor. Any attempted assignment by the Lessee without such permission shall be void;

(c) that no waiver by Lessor of any default by Lessee shall be construed as a waiver of any subsequent similar or dissimilar default by Lessee;

(d) that the lease may be modified or rescinded only by a writing signed by the party against whom the modification or rescission is sought to be enforced;

(e) unless the Lessee has accepted the Responsibility Waiver Agreement on the reverse side hereof, the Lessee agrees to provide Lessor an insurance binder showing Lessor as owner of the furniture, and providing coverage in the amount of the full replacement cost of the furniture for loss or damage by fire, flood, water, theft, vandalism, malicious mischief, and other perils generally insured against under extended coverages, said certificate to include provision for ten (10) day notice by insurance carrier to Lessor of intent to cancel insurance, or immediate notification of cancellation or failure to renew by Lessee.

admi furniture rental co.
1197 W. Alameda - Denver, Colo. 80223
Phone [illegible]

FURNITURE RENTAL AGREEMENT AND DISCLOSURE STATEMENT

DATE ____________

Furniture Group No.: ____________
Date of Order: ____________
Commencement Date: ____________
Pick-Up Date: ____________

Name ____________ Phone ____________
Address ____________ Apt. ____________
City ____________ Zip ____________

BILL TO: Name ____________
Address ____________
City ____________ Zip ____________

1. Initial Charges:
Base Rent (1st Month): $ ____________
Sales or Use Tax (1st Month): $ ____________
Fire Protection Fee (1st Month) $ ____________
Security Deposit: $ ____________
Delivery Charge: $ ____________
TOTAL Initial Payment: $ ____________

2. Monthly Charges:
Base Rent: $ ____________
Sales or Use Tax: $ ____________
Fire Protection Fee: $ ____________
TOTAL Monthly Payment: $ ____________

QU		BO	STYLE NO.	ITEMS & DESCRIPTION	QU		BO	STYLE NO.	ITEMS & DESCRIPTION
				SOFA					4/6 MATTRESS & BOXSPRING
				CHAIR					4/6 FRAME
				CHAIR					3/3 MATTRESS & BOXSPRING
				LOVESEAT					3/3 FRAME
				RECLINER					QUEEN MATTRESS & BOXSPRING
				SLEEPER					QUEEN FRAME
				COFFEE TABLE					
				END TABLE					CORNER UNIT
				LAMP TABLE					CORNER TABLE
				BUNCHING TABLE					DESK
				CONSOLE TABLE					DESK CHAIR
				LAMP					BOOKSHELF
				LAMP					
				DINING ROOM TABLE/LEAF					BAR
				DINING ROOM CHAIR					BAR STOOL
									ETAGERE
				DINETTE TABLE/LEAF					
				DINETTE CHAIR					
				DRESSER					
				MIRROR					
				CHEST					
				NIGHTSTAND					
				HEADBOARD					
				LAMP					
				LAMP					
				DRESSER					
				MIRROR					
				CHEST					
				NIGHTSTAND					
				HEADBOARD					
				LAMP					

The above merchandise is the property of Admi Furniture Rental Co. and not the model I am ordering. ____________

The above merchandise has been received in good condition. ____________

CUSTOMER COPY

Furniture Rental Agreement & Disclosure Statement

3. **Description of Leased Property.** Admi hereby leases to Customer all of those items of personal property listed on the reverse side of this Agreement and on any separate statements which are subsequently attached hereto on the terms and conditions set forth in this Agreement. All such property shall be collectively referred to as the "Furniture Group".

4. **Term and Payments.** The term of this Agreement shall be for ______________ months (subsequently called (primary term) starting on the Commencement Date. The first monthly payment is due on ____________________, 19____, and subsequent monthly payments are due in advance on the ________ day of each month thereafter. The total number of monthly payments during the primary term is ______________________ and the total amount of payments during the primary term is $____________________. This Agreement, if not terminated by either party by the end of the primary term in accordance with this Agreement, shall continue as a month-to-month rental agreement on the same terms and conditions.

5. **Security Deposit.** The Security Deposit is made to secure the faithful performance of this Agreement. Customer shall be entitled to the return of the Security Deposit within thirty (30) days after the entire Furniture Group has been returned to Admi if Customer has performed all obligations under this Agreement. No portion of the Security Deposit shall be applied by Customer against any rent due under this Agreement. Admi shall not be liable to Customer for any interest on the Security Deposit.

6. **Taxes.** Customer shall pay all sales and use taxes on the Furniture Group. The total amount of taxes payable by Customer during the primary term are $____________________.

7. **Fire Protection.** If Customer pays a monthly fire protection fee with each monthly rental payment, when due, Admi will cause its fire insurance policy to cover the full value of the Furniture Group in case of substantial total destruction of the Furniture Group. Such insurance shall not cover damage due to (1) cigarette or cigar burns or other smoking activities, or (2) malicious or willful fires. Such insurance shall not be provided for the period between the due date of the monthly rental charge and the date payment of the monthly rental charge is actually received by Admi.

8. **Late Charge.** Monthly rental payments received five (5) or more days after the due date shall be subject to a $4.00 late charge for each five-day period or portion thereof that such payments are past due. Bad checks shall be subject to the same late charge for the period they remain uncollectable. No partial payment shall be accepted at any time.

9. **Maintenance and Risk of Loss.** Customer shall be responsible for maintaining and returning the Furniture Group to Admi in good and useable condition, ordinary wear excepted, and shall be responsible for the cost of restoring all items of the Furniture Group to good and usable condition and for the cost of replacing all items that are lost, stolen or destroyed. Any damage caused by pets shall not be considered ordinary wear and shall be the responsibility of the Customer. After the Furniture Group is returned, Admi shall be responsible for repairs and cleaning due to ordinary wear.

10. **Changes in Furniture Group.**

a. **Deletions or Exchanges.** Any deletion or exchange of any items of the Furniture Group originally received can be made only after the primary term has been completed, and is subject to a minimum delivery/pick-up charge of Fifteen Dollars ($15.00).

b. **Additions.** If Customer desires any additional items after delivery of the Furniture Group, he shall pay a minimum additional delivery charge of $15.00 to Admi.

11. **Removal or Transfer of Furniture.** The Furniture Group has been leased to Customer for use solely at the Customer's address first stated in this Agreement. The Furniture Group or any item thereof shall not be removed from this address unless written permission has been granted by Admi. This Agreement is personal to Customer and Customer shall not assign or transfer any interest in the Furniture Group or in this Agreement.

12. **Default.** Customer shall be in default of this Agreement whenever Customer fails to perform any term covenant or condition contained in this Agreement. Admi shall have the right to inspect the Furniture Group at all reasonable times. If in the sole judgment of Admi the Furniture Group is being misused, damaged or abused, Customer shall also be in default. Upon default, Admi shall be entitled to terminate this Agreement and take immediate possession of the Furniture Group. If Admi terminates this Agreement upon default, Customer shall pay Admi all accrued rents, late charges, minimum pick-up charges of $15.00 for each trip, costs of repair and replacement, and liquidated damages equal to the greater of (a) the Security Deposit, or (b) fifty percent (50%) of the rents reserved for the remainder of the term.

13. **Owner and Agents.** If Admi takes possession of the Furniture Group under Paragraph 12, Customer agrees to hold harmless the owner and the agents of any apartment or building where the Furniture Group may be located from any claims, demands, or liabilities whatsoever which might arise out of said owner or agent permitting Admi to retake possession of the Furniture Group.

14. **Termination.** If Customer desires to terminate this Agreement at the end of the primary term or at the end of any term thereafter, Customer must give Admi written notice at least thirty (30) days prior to the end of such term. Customer shall make the Furniture Group available to Admi within seventy-two (72) hours after termination. There shall be no pick-up charge if all terms of this Agreement have been complied with.

15. **Attorneys' Fees.** If Admi retains an attorney to collect any money due under this Agreement or to enforce any term, covenant or condition contained in this Agreement, Customer shall pay Admi all reasonable costs, including reasonable attorneys' fees not to exceed fifteen percent (15%) of the amount due Admi upon default (provided that the attorney is not a salaried employee of Admi) and such additional costs as may be directed by a court.

16. **Credit Approval.** Credit approval of Customer is required before the Furniture Group will be delivered and before Admi is obligated under this Agreement. Customer agrees that Admi is authorized to investigate Customer's credit record.

17. **Option to Purchase.** Customer, if not in default, shall have the option to purchase the Furniture Group "AS IS" during any term of this Agreement. The purchase price shall be $______________. The amount of all timely rental payments (less any amounts paid as taxes or as fire protection fees) and the Security Deposit shall be applied towards the purchase price.

18. **Title.** Title to the Furniture Group shall belong to Admi until Customer exercises the option to purchase by making payment in full of the purchase price to Admi. All terms of this Agreement shall remain in full force and effect until said payment in full is made.

19. **Miscellaneous.** Waiver by Admi of any default or breach by Customer under this Agreement shall not constitute a waiver of any prior or subsequent default or breach. This Agreement constitutes the entire Agreement between Admi and Customer. All modifications must be in writing. If any term or condition of this Agreement is found by any court to be void, invalid or unenforceable, all other terms and provisions of this Agreement shall remain in full force and effect. The headings of each paragraph are for organizational purposes and shall not be given any meaning in interpreting this Agreement.

20. **Criminal Penalties.** §18-4-402, Colorado Revised Statutes, 1973, provides that a person commits theft of rental property if he obtains the use of such property by deception, or if after having obtained lawful possession, he intentionally fails to reveal the whereabouts of or fails to return the property within seventy-two (72) hours after the time at which he agreed to return it.

IN WITNESS WHEREOF, the undersigned have entered into this Furniture Rental Agreement this __________ day of ______________________, 19____.

CUSTOMER ACKNOWLEDGES RECEIPT OF A COPY OF THIS AGREEMENT AND THAT ALL OF THE TERMS OF THIS AGREEMENT HAVE BEEN MADE KNOWN TO CUSTOMER PRIOR TO THE EXECUTION OF THIS AGREEMENT.

ADMI FURNITURE RENTAL COMPANY, INC.

By ______________________________
Authorized Agent

CUSTOMER:

____
Signature

____
Signature

3 month lease

admi furniture rental co.
1167 W. Alameda • Denver, Colo. 80223
Phone 778-8868

LESSEE(S) ______________________ PHONE __________

ADDRESS ______________________ APT. __________

CITY ______________________ ZIP __________

BILL TO: ______________ CITY __________ ZIP __________

Furniture Group No. __________

Date of Order __________

Commencement Date __________

Pick-up Date __________

Monthly Base Rent __________

Monthly Tax __________

Fire Protection __________

Total Monthly Rent __________

Security Deposit __________

Delivery Charge __________

Initial Payment __________

QU	BO	STYLE NO.	ITEMS & DESCRIPTION	QU	BO	STYLE NO.	ITEMS & DESCRIPTION
			Sofa				4/6 matt & boxsp.
			Chair				4/6 frame
			Chair				3/3 matt & boxsp.
			Loveseat				3/3 frame
			Coffee Table				queen matt-boxsp.
			End Tables				queen frame
			Lamp Table				Console table
			Bunching Table				Bookshelf
			Lamp				
			Lamp				recliner
							Sleeper
			Din. Room Table/ Leaf				Corner Unit
			Din. Room Chair				Corner table
							Desk
			Dinette Table/ Leaf				Desk chair
			Dinette Chair				
							Bar
			Dresser				Bar stool
			Mirror				Etagere
			Chest				
			Nightstand				
			Head board				
			Lamp				
			Lamp				
			Dresser				
			Mirror				
			Chest				
			Nightstand				
			Head board				
			Lamp				

The above merchandise is the property of Admi Furniture Rental Co. and are the items I am ordering.

____

The above merchandise has been received in good condition

____

CUSTOMER COPY

[illegible] FURNITURE RENTAL AGREEMENT

IT IS MUTUALLY AGREED THAT:

(1) Admi Furniture Rental Co. hereinafter called "Admi" rents to Lessee all of those items of personal property listed on the Delivery Receipt which is attached hereto. All such personal property is collectively referred to as the "Furniture Group". The total monthly rental charge for the items listed on the Delivery receipt shall be $ ________ payable in advance on the ________ day of each successive month.

(2) The terms of this agreement shall be for ________ months (Primary Term) and thereafter shall be from month to month until terminated by Admi or the Lessee. Such termination by the Lessee shall be subject to Paragraph 3. The term shall begin with the commencement date.

(3) Provided that the Lessee is not in default under any terms of this Agreement, Lessee may give notice of cancellation of this entire Agreement thirty (30) days prior to the end of the Primary Term. Such termination shall not be effective until thirty (30) days after written notice is actually received by Admi. Liquidated damages shall be paid by the Lessee equal to 50% of the amount due for the unexpired term of the Rental Agreement. Admi may retain the Lessee's Security Deposit if default occurs during the Primary term of this Rental Agreement, which retention however shall not relieve the Lessee of the obligation to pay Liquidated Damages (if any) as provided in this Agreement.
The foregoing provision of the Paragraph shall not relieve Lessee of the obligation to make rental payments for the term of the Agreement (if any) following the Primary Term.

(4) A Security Deposit of $ ________ is payable on execution of the Rental Agreement by the Lessee. The Security Deposit herewith shall be returned to the Lessee as soon as practicable after the entire Group has been returned to Admi, and provided the Lessee has fully performed all of Lessee's obligations hereunder. The Lessee shall not attempt to apply any portion of the Security Deposit against rent due under this Agreement, but shall continue to make rental payments as hereinabove provided. Admi shall not be liable to Lessee for any interest on the Security Deposit.

(5) With respect to rental payments received five (5) or more days after the date due, as well as bad checks, are subject to a $4.00 Late Charge for each five (5) day period or portion thereof that such payments are overdue. No partial payments shall be accepted at any time.

(6) The Furniture Group, or any portion thereof, shall not be moved from the address and apartment number to which it was delivered unless specific written permission has been obtained from Admi. Lessee shall not assign or transfer to any other person any interest in this Agreement or personal property rented hereunder. The Lessee shall make Furniture group available to Admi within seventy-two (72) hours of the termination date as stipulated in Paragraph 3.

(7) Lessee shall bear all risks to the Furniture Group from whatever cause, for damage, loss, theft or destruction. Lessee shall return the Furniture Group rented hereunder in good condition excepting only normal wear. Lessee shall not cause or permit any item of the Furniture Group to be affixed to the premises in such a way as to become a fixture. Lessee further agrees to pay Admi the cost of restoring to good and usable condition any damage done to the Furniture Group. Admi shall have the privilege to inspect the rented Furniture Group at all reasonable times. If, in the sole judgment of Admi, the Furniture Group is abused, damaged or misused, Admi may, without terminating Lessee's obligations under this Agreement, immediately take possession of the Furniture Group. Such retaking shall create no right in Lessee to a refund, nor shall it extinguish Admi's right to payment for such damage, payment for unpaid rent, or for Liquidated Damages.

(8) Lessee specifically agrees to hold harmless the owner(s) or his agent(s) where Admi's Furniture Group is located, from any claims, demands, damages, costs, attorneys' fees and suits at law or in equity as a result of the owner permitting Admi to retake possession of the Furniture Group. In the event Admi retains an attorney to enforce any provision of this Agreement, Lessee agrees to pay reasonable attorneys' fees in addition to all other amounts due. Such fees shall not be in excess of 15% of the amount due Admi after default or such additional fees as may be directed by a court, provided the attorney is not a salaried employee of Admi or an assign.

(9) This Rental Agreement constitutes the entire agreement by the parties. No provision hereof may be waived except by a document in writing executed by both parties. The invalidity of any part of this Rental Agreement will not affect the remainder of this Rental Agreement. No oral representation made by any agent of Admi shall be binding upon Admi unless specifically incorporated in this Agreement.

(10) (a) After Delivery of Furniture Group if Lessee desires any additions of any item(s) he shall pay a minimum additional delivery charge of $15.00 (fifteen dollars) to Admi.

(b) Any deletion or exchange of any one item of the Furniture Group originally received can be made only after the Primary Term has been completed, and is subject to a minimum moving charge of $15.00 (fifteen dollars).

(11) Upon any default in any one of the terms of this Rental Agreement by the Lessee, Admi, or any agent thereof, may at its option, without notice, and without terminating Lessee's obligations under this Agreement, enter and obtain access to the premises through request of the landlord or its agent, where the Furniture Group is located and retake possession of the Furniture Group without liability to Admi, the landlord or its agent(s) of, either on account of such retaking, and Lessee further consents to a seizure and immediate repossession of the Furniture Group by Admi or any agent thereof, or by the sheriff or other judicial officer in the county in which the Furniture Group is located. After default by the Lessee and demand by Admi, the Lessee shall be liable to Admi for all damages sustained by Admi resulting from the failure of the Lessee to make Furniture Group available for repossession, including a minimum charge of $15.00 (fifteen dollars) for each trip made by Admi or its agent(s) for the purpose of repossession at which the Furniture Group is not made available.

(12) If Lessee pays a monthly charge of $ ________ with each installment of rent at the due date of such installment as above specified, Admi will cause its fire insurance policy to cover the full value of the Furniture Group in case of substantial total destruction for the period covered by the monthly rental payment. (a) Such insurance shall not cover damage due to (1) cigarette or cigar burns or other smoking activities or (2) malicious or willful fire and (b) such insurance shall not be applicable to the period between the due date of the monthly charge and the date payment of the monthly charge is actually received by Admi.

(13) WARNING: COLORADO LAW TITLE 18-4-402 provides:

(1) A person commits theft of rental property if he:

(a) Obtains the temporary use of personal property of another, which is available only for hire, by means of threat or deception, or knowing that such use is without the consent of the person providing the personal property;

(b) Having lawfully obtained possession for temporary use of the personal property of another which is available only for hire, intentionally fails to reveal the whereabouts of or to return said property to the owner thereof or his representative or to the person from whom he has received it within seventy-two (72) hours after the time at which he agreed to return it.

(2) Theft of rental property is a class 3 misdemeanor where the value of the property involved is less than one hundred dollars.

(3) Theft of rental property is a class 5 felony where the value of the property involved is one hundred dollars or more.

(14) There shall be no Pick-up Charge if all terms of this contract have been met.

IN WITNESS WHEREOF, the parties have signed this Rental Agreement the date and year first above written.

________________________ ADMI RENTAL CO. ________________________
Lessee

________________________ By ________________________
Lessee

FURNITURE LEASE AGREEMENT

DATE: ____________________

LESSOR: INTERNATIONAL FURNITURE RENTALS OF NEW YORK, INC.
15 SAW MILL RIVER ROAD
HAWTHORNE, NEW YORK 10532

LESSEE: Name: ____________________

Address: ____________________

Home Phone: ____________________ Business Phone: ____________________

Delivery Address: ____________________

1. LESSOR leases to the LESSEE the furniture and accessories, hereinafter called "FURNITURE", described on a separate schedule which the LESSEE acknowledges receiving before signing this lease. The schedule shall be deemed part of this lease until the delivery of the FURNITURE when a more detailed schedule, to be signed or initialled by the LESSEE, or its authorized agent, to indicate acceptance, shall be substituted for the original schedule.

2. The following charges, shall be paid by the LESSEE at the time of the signing of this lease:

Basic Monthly Rental	$ ____________
Sales/Use Tax	____________
Fire Insurance Waiver Fee	____________
Refundable Security Deposit	____________
Pick Up and Delivery Charge	____________
Total Initial Payment	$ ____________

3. The term of this lease shall be for ______ Months commencing on the ______ day of ____________, 19 ______. The monthly rental payment shall be as follows:

Basic Monthly Rental	$ ____________
Sales/Use Tax	____________
Fire Insurance Waiver Fee	____________
Total Monthly Rental	$ ____________

The first monthly rental shall be paid in advance at the time of the signing of this lease. Subsequent monthly rentals shall be due and payable in advance on the ________ day of each month during the term of this lease. The total amount of the monthly rental is $ ____________ which sum includes $ ____________ for sales/use tax and $ ____________ for fire insurance waiver fee. The LESSEE shall also be responsible for any property or other tax, charge, fee or assessment on the FURNITURE or its use. LESSEE shall pay as additional rent $5.00 for each monthly rental payment which is late more than seven (7) days to defray expenses incidental to handling such delinquent sums.

4. The LESSEE shall take good care of the FURNITURE and shall be responsible for any and all damage or loss, from all causes except fire, and shall, at the end of the term, or at any earlier termination date, return the FURNITURE to the LESSOR in the same condition as when delivered, ordinary wear and tear excepted. In consideration of the payment of the monthly fire insurance waiver fee, the LESSOR shall bear the risk of damage or loss due to fire, but not for any other cause. Title to the FURNITURE shall at all times be in the LESSOR. The LESSEE shall not assign, pledge, loan, mortgage, sublet or permit the FURNITURE to be encumbered in any manner, nor shall the LESSEE permit the removal of the FURNITURE from the premises where delivered. The LESSOR may, at any reasonable time, enter the LESSEE's premises to inspect the FURNITURE.

5. This lease is subject to approval of the LESSEE's credit. If LESSEE's credit is not approved the entire initial payment shall be returned to the LESSEE, and this lease will be deemed null and void from its inception.

6. There are no warranties or guaranties, express or implied, made with respect to the FURNITURE, or its use, by either the LESSOR or the manufacturer of the FURNITURE.

7. The LESSEE shall have the option of purchasing all of the original FURNITURE at any time during the term of this lease, provided that he is not then in default under any of the provisions of the lease. The purchase price is $ ____________ . The first twelve (12) monthly rent payments (less the amounts paid for sales/use tax and fire insurance waiver fees) shall be applied toward the purchase price. The option does not apply to any furniture added or replaced after the initial delivery.

8. The LESSEE shall, not less than 30 days prior to the termination of the lease, advise the LESSOR in writing to arrange for the pick up of the FURNITURE. The LESSEE, or its authorized agent, shall remain on the premises on the date designated by the LESSOR for the pick-up of the FURNITURE. The LESSEE acknowledges that it is impracticable to set an exact time at which its truck shall be at the premises. In the event the LESSEE, or its authorized agent, is not at the premises on the date designated for the delivery or pick up of the FURNITURE, then the LESSOR shall be entitled to another delivery charge. In the event that the last day of the term falls on a Saturday, Sunday or holiday, the LESSOR shall be entitled to pick up the FURNITURE on the last business day prior thereto. There shall be no proration of the monthly rental in the event the FURNITURE is surrendered prior to the last day of the term.

9. (a) Upon default in the payment of any installment of rent or additional rent, or upon a breach of any other term of this lease by the LESSEE, or if during the term of this lease bankruptcy or insolvency proceedings are commenced by or against the LESSEE, or if the LESSEE discontinues occupying the premises, the LESSOR shall have the right without notice or demand to terminate this lease, but such termination shall not release the LESSEE from the payment of any rent or additional rent then due and any damage sustained by the LESSOR. In the event of any such termination, LESSOR shall, in addition to any other specific item of damage or additional rent, also be entitled to damages for loss of profits. The parties acknowledge that the loss of profits is subject to a number of variable factors and will be extremely difficult to compute. It is, therefore, agreed that in the event of any such termination, fifty (50%) per cent of the monthly rental times the number of months remaining in the term bears a reasonable relation to the LESSOR's actual loss of profits; and the LESSOR shall be entitled to such sum as liquidated damages for loss of profits.

(b) In the case of any such default, breach, bankruptcy, insolvency proceedings, or at the end of the term, the LESSEE, upon LESSOR's demand, shall immediately surrender the FURNITURE to the LESSOR. If, under the circumstances, it is impracticable for the LESSOR to make a demand, or if the LESSEE fails or refuses to surrender the FURNITURE forthwith to the LESSOR, then, in addition to any other rights or remedies, the LESSOR or any of its authorized agents, or any constable, marshal, sheriff or deputy sheriff or other similar official shall have the right to enter the LESSEE's premises where the FURNITURE may be found, forcibly if necessary, and to take possession of and remove the FURNITURE without legal process. The LESSEE releases any claim or right of action against LESSOR, any of its authorized agents, any constable, marshal, sheriff or deputy sheriff or other similar official for trespass or damages caused by reason of such entry and removal.

(c) In the event that the FURNITURE is not surrendered after the expiration of the term, the LESSEE agrees to pay to the LESSOR, as additional rent, in advance on the .... day of each month, the sum of $ .... for each month or part of a month that the FURNITURE is not surrendered.

10. If as a result of the LESSEE's failure td comply with any of the provisions of this lease, the LESSOR is required to engage the services of an attorney, then, in addition to any other rent, additional rent, or damages, LESSOR shall be entitled, as additional rent, to reasonable attorney's fees of 15% of the sum due from the LESSEE to the LESSOR or $200.00, whichever sum shall be greater, it being agreed that $200.00 represents minimum reasonable counsel fees.

11. All notices required to be given by LESSOR to LESSEE shall be sufficient if given by leaving the same at the premises or mailing the same to the premises. Notices required to be given by LESSEE to LESSOR must be given by certified or registered mail to the address of the LESSOR hereinabove mentioned, or such other address as LESSOR shall from time to time designate by giving notice to LESSEE. The only admissible evidence of notice given by LESSEE to LESSOR shall be a certified or registered mail return receipt signed by LESSOR or its agent.

12. This lease contains the entire understanding of the parties which shall not be modified orally.

INTERNATIONAL FURNITURE RENTALS OF NEW YORK, INC.

By ....

....

LESSEE

ASK ABOUT OUR OTHER LEASING SHOWROOMS IN THE CAROLINAS AND VIRGINIA.

LEASE AGREEMENT

RESIDENTIAL

08189

METROLEASE ®

Metropolitan Furniture Leasing, Inc.

P. O. Box 17044 Raleigh, N. C. 27619
3010 Industrial Drive Phone 919-832-8887

NFG: YES NO

Date of Contract	/ /
Delivery Date	/ /
Term of Lease	Mos.
Due Date Monthly	

Office ____________ No. ________

By ____________ No. ________

Cr. Appr. ______ Mgr. Appr. ______

LEASE TYPE:
☐ Apart. ST #12 ☐ Office ST #16
☐ Apart. Full Payout #14 ☐ Office Full Payout #18
☐ Other Type: ____________ # ______

RENTAL PAYMENT SCHEDULE	
1. Monthly Furniture Rental	$
2. Use Tax	
3. Damage Waiver Fee	
4. Total Due Monthly	$

LESSEE (S) ____________ ____________

BILLING ADDRESS ____________

Apt./Office Project ____________ Project No. ______

Apt. No. ______ County ____________ County No. ______

DELIVERY INSTRUCTIONS (Means of Entry, Time) ____________

CASH RECEIPT	
5. Full Month's Charges Paid (line 4 above)	$
6. Partial Month's Charges Paid:	
7. Prorated Rent	
8. Prorated Use Tax	
9. Prorated Waiver Fee	
10. Delivery Charge	
11. Refundable Security Deposit	
12.	
13. Total Due before Delivery	$

Telephone: Day ____________ Night ____________ A/R Code ________ R/F ________

For value received, the LESSOR agrees to lease to the LESSEE the furniture listed in this agreement, together with all additions and replacements.

Quan.	Metro Inv. No.	Item	Description	Monthly Lease Rate	Retail Value*
		Sofa			
		Chair			
		Chair			
		Lamp			
		End Table			
		Cocktail Table			
		Television/Stereo	(Serial No. ____________)		
		Dining Table			
		Dining Chairs			
		Headboard			
		Bed Frame			
		Mattress & Springs			
		Dresser & Mirror			
		Night Stand			
		Chest			
		Bedroom Lamp			
			SHORT TERM SURCHARGE ________ %		
			NEW FURNITURE GUARANTEE FEE		
			TOTAL	$	$

*RETAIL VALUE SHOWN IS FOR DAMAGE OR LOSS APPRAISAL PURPOSES ONLY.

ML FORM MKTG-6 (Rev. 5/80)
Page No. 1

This agreement continued on reverse side

LEASE AGREEMENT (Continued)

1. Lessor agrees to lease to the Lessee and Lessee agrees to hire from the Lessor the personal property described on Page No. 1 hereof for a term beginning on the date of delivery to Lessee and continuing for the period specified as the term of lease, all as appears on Page No. 1 hereof.

2. Consideration for the lease shall be payable in advance in monthly installments; the amount of each monthly installment and the day of the month each installment is due is stated on Page No. 1 hereof. If a monthly installment is not received within five days of the due date, Lessee agrees to pay an administrative charge of Five Dollars ($5.00) for each such default in addition to the monthly installment. (Example: Payments due on the first (1st) of the month must be received by the fifth (5th) of the month.)

If a payment is made by check which is returned unpaid by the bank for any reason Lessee agrees to pay an administrative charge of Six Dollars ($6.00) for each such occurrence.

3. Lessee acknowledges delivery of personal property listed on Page 1 hereof unless written notice to the contrary is mailed to the Lessor within five days after date of delivery.

4. Lessor shall have the right, without notice to Lessee, to encumber said personal property in whole or in part or to assign this Lease; and Lessee shall not assign, transfer, pledge, hypothecate or otherwise dispose of this Lease or any interest therein, and shall not sublet or lend said personal property to anyone; and the said personal property shall not be removed from the premises designated on Page No. 1 hereof under the heading "Address" or "Delivery Instructions" if a different destination is specified therein, without prior written permission of Lessor. This Lease shall always be subordinate to any encumbrance placed on said personal property by Lessor.

5. Lessor shall be permitted to display a notice of ownership on said personal property by means of stencil, stamp, plate, or otherwise, and the same shall be permanently affixed thereto, to be removed only by Lessor.

6. Lessor shall pay all ad valorem taxes upon the personal property covered by this Lease Agreement and all taxes measured by its net income. With the exception of the foregoing, Lessee shall, in the manner directed by the Lessor, pay all taxes (including sales taxes), fees and assessments, however designated, levied or based, upon the rentals, or upon the Lease or the personal property, or the use thereof, or any taxes, fees and assessments, or amounts in lieu thereof, paid or payable to the Lessor in respect to the foregoing. Lessee shall promptly notify Lessor regarding any tax notice, tax reports, inquiries from taxing authorities concerning taxes, fees, assessments and amounts in lieu thereof referred to herein.

7. Upon the expiration of the term of this Lease, said Lease shall continue on a month to month basis and all of the terms and conditions of this lease shall remain in force, unless on or before thirty (30) days prior to the last day of any rental period either Lessor or Lessee gives the other written notice of termination.

8. Lessee shall obtain, maintain and pay all premiums for insurance against loss, theft, damage, or destruction of the personal property leased hereunder in an amount not less than the full replacement value thereof, with loss payable to Lessor; such insurance shall be with a company and in a form satisfactory to Lessor, and shall be delivered to Lessor prior to delivery of the personal property leased hereunder.

9. Lessee shall indemnify and save Lessor harmless from all claims, costs, expenses, damages, and liabilities resulting from or pertaining to the use, condition (including latent or other defects, whether discoverable or not), or operation of the personal property leased hereunder.

10. Lessee shall bear the entire risk of loss, theft, damage, or destruction of said personal property from any cause whatsoever. No loss, theft, damage or destruction of the personal property leased hereunder shall relieve Lessee of the obligation to pay rent or any other obligation under this Lease. In the event of loss, theft, damage destruction of any kind to any of said personal property, Lessee, at the option of Lessor, shall: (a) place the same in good condition and repair; or (b) replace the same with like personal property in good condition or repair; or (c) if such item of personal property is determined by Lessor to be lost, stolen, damaged beyond repair, or destroyed, and if Lessor so requests as an alternative to "(b)" above, pay Lessor the total rent then due and owing on such item of personal property, plus the total of the following amounts which the parties agree will equal the fair value of the said personal property on the date of said loss, theft, damage or destruction (i) the present value computed as of the date of said loss, theft, damage or destruction, of all unpaid rent and other amounts payable by Lessee with respect to said item of personal property to the date of expiration of the then current term of this Lease, plus (ii) the reversionary value of said item of personal property as of said expiration date. Upon Lessor's receipt of such payment, Lessee shall be entitled to whatever interest Lessor may have in said item of personal property, in its then condition and location, without warranty expressly implied. Any proceeds of an insurance policy procured pursuant to Paragraph 7 hereof shall be applied to any liability of the Lessee arising hereunder.

11. Upon Lessee's default in any manner hereunder, including, but not limited to, failure to pay any installment of rental within five days after due date or failure to comply with Lessor's instructions pursuant to Paragraph 9 hereof within five days where damage to leased personal property in the opinion of Lessor exceeds the security deposit, Lessor may, in addition to any other legal or equitable remedies: (a) recover from Lessee all unpaid rents and other charges for the entire period during which personal property is in the Lessee's possession; (b) declare the entire amount of rent for the remaining portion of the lease term subsequent to the date of default immediately due and payable, and recover from Lessee such amount of rent; and (c) require the immediate surrender of such personal property, take possession of such personal property with or without process of law, enter upon any premises of Lessee for that purpose, and, if Lessor so elects, to lease all or any part of such personal property to any third persons upon such terms as Lessor may determine and apply the amounts recovered to Lessee's rental due or to become due after first deducting reasonable expenses of re-taking, holding, storing, preparing for lease, and the like, including reasonable attorney's fees and legal expenses incurred by Lessor. Neither the surrender, the repossession, nor the reletting of any leased personal property shall terminate this Lease Agreement or the obligations of the Lessee hereunder.

At any time that Lessee is in default as herein provided, or upon the Lessee's becoming insolvent, making an assignment for the benefit of creditors, becoming bankrupt, filing a petition for an arrangement or for any other relief under the bankruptcy laws, or if a receiver or trustee of Lessee or its property be appointed, the Lessor may take immediate possession of the leased personal property, and upon such taking of possession by the Lessor, all of the rights of the Lessee in such personal property shall terminate and cease.

12. The amount of the security payment or deposit stated on Page No. 1 hereof shall be returned to Lessee upon the termination of this Lease Agreement and return of the furniture to Lessor's premises, provided the Lessee has fully performed all terms and conditions of this Lease to the satisfaction of the Lessor; further, Lessor shall be permitted to intermingle said security payment or deposit with any other fund or funds to utilize same and shall not be a fiduciary with respect thereto, and Lessee hereby acknowledges good, valuable, and lawful consideration received with respect thereto.

13. Lessee shall pay direct to Lessor, upon execution of this lease agreement, said security deposit or payment, first month's installment of rent, sales tax, delivery charges, and other related items of expense; thereafter, all payments to be made direct to Lessor by Lessee.

14. Lessee acknowledges receipts of personal property itemized on Page No. 1 hereof in good repair and condition, and acknowledges that no express or implied warranties exist with respect thereto.

15. Lessor or its authorized agents or assigns shall have the right to enter into and upon said premises at any reasonable hour and without notice to Lessee for the purpose of inspection, replacement, removal or installation with or without court process.

16. "Lessor" and "Lessee" as used in this Agreement shall include the successors and assigns of Lessor, and the heirs and personal representatives of Lessee. If more than one Lessee executed this Agreement, their obligations hereunder shall be joint and several.

IN WITNESS WHEREOF, the parties hereto affix their hands and seals this _____ day of __________, 19 ___.

LESSEES:

By ______________________________

By ______________________________

Attest: ______________________________
SECRETARY

By ______________________________

LESSOR:
METROPOLITAN FURNITURE LEASING, INC.

Attest: ______________________________
SECRETARY

By ______________________________

DAMAGE WAIVER AGREEMENT

It is agreed for the consideration of $ __________ additional payments per month — Paragraph 10 of this Furniture Lease Agreement is modified to read as follows:

The Lessor shall bear all risks of damage or destruction of the furniture described on the original agreement for rental of furniture, from whatever cause or source arising, except such as may have resulted from intentional or willful act or omission of the Lessee, and specifically excluding damage or destruction from willful negligence, misuse or abuse, moving, theft and such damage as caused by pets.

This waiver, subject to the clauses noted above, shall be valid only provided the Lessee has paid all monthly rental and waiver fees on a current basis for the full life of the original rental agreement.

LESSEE(S): ______________________________

Date ______________ ______________________________

ML FORM MKTG-6
Page No. 2

NEW CUSTOMER
CHECKLIST

As a new customer, we sincerely appreciate your business and we will do our utmost to provide you the best service possible. To help you understand your Lease Agreement, please review this checklist of important points and keep it with your copy of the Lease Agreement.

1. The **Lease Agreement** is a legal contract enforceable under the laws of this state. You should read and understand it, especially these key points:
    - A. **Late Charges** - $6 per payment for payments *not received* within 5 days inclusive of the due date. (Example: Payment due on the 1st, late charge accessed on the 6th).
    - B. **Length of Lease** - The lease term must be completed, and then the lease automatically becomes a month-to-month lease.
    - C. **Transfer Privilege** - Any MetroLease Furniture Rental customer in one city has the privilege of transferring his lease to another city served by MetroLease for a total charge of only $40 which covers pick-up and redelivery of equivalent furniture. This can be done without incurring a lease obligation any longer than the original lease and without paying any further security deposits or other obligations.
    - D. **Your Security Deposit** may be forfeited if the lease agreement is defaulted.
2. **Credit Approval** by MetroLease is required before delivery. You will be notified if there are any problems.
3. **Purchase Option:** Provided your account has not at any time been more than 25 days past due, MetroLease, upon your request and at its sole discretion may grant you the right to purchase the furniture for cash for the retail value shown on the lease agreement and to apply 100% of the total rentals paid for residential or office furniture, excluding sales tax and waiver fee, up to 65% of the retail value of the furniture (50% credit of rental payments is given toward purchase of TVs). Also, 100% credit is given for payments of "New Furniture Guarantee Fee" (see below). MetroLease will be happy to help arrange bank financing. Contact your MetroLease Office should you need help in computing your purchase option credits any time. Purchase options for "packages" apply only to the entire package.

NOTE: Purchasing the furniture is at the option of MetroLease, and you must actually request MetroLease to sell you the furniture. A bill of sale will be issued upon purchase. Since you are renting the furniture, unless you request otherwise, no refunds will be made for any rental payments made beyond the amount required to purchase the furniture under the terms outlined above. Please allow 10 days for response to your purchase conversion request.

4. **New Furniture:** While you can expect your furniture to be in "showroom" condition, some of it may have been leased before. We do have a **New Furniture Guarantee Program** available. By paying an additional $6 fee per month, which may be applied towards the purchase price, you will be guaranteed new furniture. If any item is out of stock, it will be exchanged later at MetroLease's expense.
5. **Damage Waiver or Insurance Required:** A damage waiver agreement is available to the leasee to cover damage or losses **other than:** theft, willful negligence, misuse or abuse, moving, and damage caused by pets. Evidence of insurance must be provided MetroLease if the damage waiver option is not elected.
6. **Delivery and Installation:** 24-hour delivery is guaranteed or we will reimburse the motel lodging bill, provided the lease is signed, monies paid, and credit approved prior to 1:00 P.M. on the day before delivery (Sundays & holidays excepted). Your furniture will be delivered, assembled and placed in your home. Let us know immediately if there are any problems. MetroLease cannot guarantee a specific delivery time other than "morning" or "afternoon" on the date scheduled. You are responsible for providing entry, either by being on premises or providing access through your Resident Manager or someone else. If our delivery men are unable to gain entry on the date scheduled and a repeat trip is necessary, you will be charged an additional $40.
7. **Criminal Offense for Failure to Return Rented Property.** In most states it is a criminal offense to fail to return rented property upon default or termination of the lease. It is also a breach of contract to relocate the rented furniture without the written permission from the Lessor.
8. **Cancellation:** Should you cancel the lease before delivery, a $15 administrative charge is due ($40 if your furniture is already loaded). The lease is not cancellable after delivery.
9. **Coupon Book:** A coupon book is mailed as a convenience. We do not send monthly statements. The coupon book is not a contract and does not imply or otherwise substitute for the lease agreement. A coupon should be enclosed with each rental check. If coupon book has been lost or delayed by mail, payment must be made without coupon.
10. **Guarantee of Satisfaction:** If within the first 30 days you are not completely satisfied, we will do everything in our power to make satisfactory adjustments, or refund 100% of all rentals paid and the security deposit if you cannot be satisfied. Delivery charges are not refundable.
11. **To have your furniture picked up** at the end of your lease, call or write our office at least 30 days before moving and ask for the Manager or Credit Manager. Please furnish your forwarding address at that time so we can forward any monies due.

I have read and understand the above. I also understand that this checklist is not a binding legal contract by either party and the only legal agreement is contained in the lease agreement No. ______________ to which further reference is made.

Metropolitan Furniture Leasing, Inc.
d.b.a. 'MetroLease'

By: ____
Lessor Date

____
Lessee Date

METROLEASE®
FURNITURE RENTALS

ML Form Mktg. 30 (rev. 7/81)

Senator HAWKINS. Thank you. I thank all of you for coming and for your participation today. We're running on a very tight schedule and I'd like to introduce our third panel who are witnesses from the banking industry.

We have Mr. Donald Brabant, vice president, Indian Head Bank & Trust Co. in Portsmouth, N.H.; on behalf of the American Bankers Association, who serves on the consumer leasing task force; and we have Mr. Robert Monteith, who is representing the Consumers Bankers Association, who is senior vice president of Security Pacific National Bank of Los Angeles.

I welcome you both and I express my appreciation for your comprehensive statements which will be made a part of the record and I'd ask you, if you can, to confine your oral statement to 5 minutes each so that we could ask questions.

STATEMENT OF DONALD R. BRABANT, VICE PRESIDENT, INDIAN HEAD BANK & TRUST CO., PORTSMOUTH, N.H., ON BEHALF OF THE AMERICAN BANKERS ASSOCIATION

Mr. BRABANT. Thank you, Madam Chairman.

[Complete statement follows:]

TESTIMONY OF THE
AMERICAN BANKERS ASSOCIATION
BEFORE THE
SUBCOMMITTEE ON CONSUMER AFFAIRS
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS
ON S.1152
THE CONSUMER LEASING RENTAL PURCHASE AGREEMENT ACT OF 1983

JULY 19, 1983

Madam Chairman, members of the Committee, my name is Donald Brabant. I am Vice President of the Indian Head Bank and Trust Company in Portsmouth, New Hampshire. I am here today on behalf of the American Bankers Association. Our association represents over 90 percent of the over 14,000 commercial banks in the country. I am currently a member of the Executive Committee of the Instalment Lending Division of the Association and I also serve on the Association's Consumer Leasing Task Force. It is my pleasure to be here today to submit to you our comments on S.1152, the Consumer Lease and Rental Purchase Agreement Act.

The bill as introduced is essentially the same legislation proposed by the Federal Reserve Board on March 31. The staff of the Federal Reserve Board has invested a great deal of time and effort in its attempt to simplify and streamline the disclosures required in a consumer lease transaction. We think that in general they have done a good job. While we have identified a number of areas where we feel improvements may be made, we feel that the Federal Reserve by and large has presented workable legislation which by its "plain language" approach makes the leasing transaction more understandable for all parties involved.

In 1980, when the Truth in Lending Act was substantially revised and simplified, the provisions of Regulation Z which at that time covered consumer leasing were removed, segregated, and redisignated as Regulation M. There was no attempt made at that time to simplify the Consumer Leasing Act along the lines of Truth in Lending. However, the pre-1980 Regulation Z and the current Regulation M suffer from some of the same infirmities which were addressed in the 1980 Truth in Lending simplification effort. Chief among these infirmities is a malady known as "information overload". The current Regulation M model disclosure forms for a consumer lease, attempt to give the consumer too much information and make no attempt to segregate key disclosures from less important information. S.1152 would address both these problems by reducing the number of disclosures and by segregating key disclosures into a "federal box" much as was done in Truth in Lending simplification. The current consumer leasing model disclosure form covers two standard pages and contains much information which the average consumer lessee in all probability finds to be of little value. The revised model disclosure form, however, as proposed by the Federal Reserve Board, is much shorter and more concise and contains a limited number of disclosures most of which will be useful and informative for consumers. We feel that this approach will be very beneficial.

In addition, S.1152 is drafted in plain language. As you are I am sure aware Madam Chairman, a number of states have passed laws mandating the use of plain language in forms and documents used within their jurisdictions. Perhaps most recently, the Commerce Department has initiated a Forum on Plain English to promote the benefits of drafting documents in a simple readable form. Our Association has been involved with the Commerce Department efforts since its formative stages early this year, and we applaud the Federal Reserve Board for their plain english approach in drafting this legislation. Indeed, my own bank has switched to plain english forms and we find them to be eminently more satisfactory to both the customer and the bank, since both parties have a very clear understanding of the content of the agreement. We feel that the simplified and reduced number of disclosures coupled with the plain language approach to both the statute and the disclosures, make this a laudable effort on the part of the Federal Reserve Board.

The proposed legislation would also include so-called "rental purchase" agreements within the scope of the Consumer Leasing Act. These agreements are typically entered into for the rental of personal property, usually a home appliance, and have no fixed duration. Usually they involve a monthly or weekly payment, each periodic payment renewing the rental agreement for a subsequent period, and it is typically agreed that upon completion of a fixed number of payments, title of the property will be transfered to the lessee. These agreements have heretofore not been covered by the Consumer Leasing Act because current law defines a "lease" as one having a duration of at least four months. Since rental purchase agreements have no fixed duration, they have not been covered. It appears that there may be a need for some required disclosure for these types of contracts, and indeed the industry itself seems to desire federal legislation.

In contrast to the so-called rental purchase agreement, an automobile lease typically involves an initial payment, a contractual liability to make a series of monthly payments, for 36 or 48 months, and, depending on whether it is an open-end or closed-end lease, the potential for some liability for the residual value of the vehicle at the end of the lease term. In addition, should the lease be terminated early, there is additional liability on the part of the lessee. An option to purchase the rental property at the end of the lease term may be a part of the agreement, although it certainly is not an integral part of the contract as it is in the rental purchase contracts.

In short, it seems to us that these are two very different types of transactions. The Federal Reserve Board, in drafting this legislation, has also recognized the distinction since the rental purchase agreements have not been melded into the leasing form, but instead basically have been classed as a separate category of contract with different disclosures. This being the case, it seems reasonable to us that every effort be made to maintain the distinction between these two types of contracts. Thereby, it will be evident that Congress determined them to be separate and distinct, if in the future, regulatory or legislative bodies endeavor to assess the merits of each of these types of transactions. It is our suggestion, therefore, that these rental purchase type agreements be treated in a separate title of the Consumer Protection Act to insure their continued distinction from the consumer lease transaction. Such a separation would not be a difficult task since as I mentioned, the rental purchase agreements are already treated as an essentially separate entity within the proposed legislation. This separation would make it clear that Congress, after reviewing the merits of each, found them sufficiently distinct to afford each a separate title in the Consumer Protection Act.

As I mentioned earlier, there are some areas of the proposed legislation which we feel might be improved or changed. I will attempt to discuss briefly each of these areas.

Inclusion of Lease Arrangers in the Definition of "Lessor"

The definition of "lessor" in the proposed legislation excludes from coverage persons who are merely lease arrangers. While we recognize this attempt to provide parity with the Truth in Lending Act, which excludes from coverage arrangers of credit, we feel that lease arrangers typically have a different relationship to the transaction in question and should be covered by the Act. The usual lease arranger with whom banks deal, is an automobile dealer. The dealer may actually "sell" the lease to the consumer and provide forms which name the bank as the payee/lessor of the automobile. Thus, in many cases, while the "lessor" in the legal documentation may be the lending institution, for all practical purposes the person making the disclosures and providing the lease forms to the consumer is the automobile dealer. It seems most appropriate to us that in such situations the dealer as "primary discloser" should be included within the scope of the Consumer Leasing Act.

Total Lease Cost

The proposed legislation would provide for segregated disclosures, and federal box form, of several items which are perceived to be of most import and value to consumers. These would include: total initial payments; total of periodic or scheduled payments; total end of term payments; and total lease cost. While the totals of initial, periodic, and end of term payments may be valuable to the consumer, the attempt to disclose the total lease cost may in fact mislead the consumer should he choose to rely on it.

Leases come in many forms. One lease may require a higher initial payment with lower monthly payments, another just the reverse with a lower start-up cost but higher periodic payments, yet both may have the same total lease cost as that term is defined in the proposed legislation. In such a situation, the total lease cost disclosure would certainly be misleading to the consumer since the lease with a higher initial payment would also have a higher opportunity cost of funds due to the higher outlay of cash at the front-end of the lease. While it may be preferable to some consumers to have lower monthly payments, even at the cost of the higher down payment, it certainly would be misleading to tell the consumer that the "cost" of both leases is the same.

In addition, to the extent that the periodic payments contain insurance premiums, taxes, or other official fees, all of which may be subject to change over the term of the lease, the total lease cost may be nothing more than an estimate. Use taxes, property taxes, registration and licensing fees all vary from year to year. This being so, their incremental cost cannot be known at the inception of the lease. Insurance premiums, which may be included in periodic payments, are equally as fluid and may be quite different by the end of the lease term. These variables, to the extent that they are included in the periodic payments, will render an assessment of the "total lease cost" at the front end of the lease nothing more than conjecture. Certainly to the extent that a required disclosure constitutes a guess as to what the total lease cost will be, it represents an opportunity for error on the part of the lessor in providing the disclosure, and another area for potential litigation and liability.

It should also be noted that inclusion of official fees and taxes or insurance premiums is optional. It is, therefore, entirely possible for two leases to have identical underlying costs for the actual vehicle lease but with widely disparate "total lease costs". If one lease includes the variables of insurance, taxes and official fees, and the other leaves them to be paid separately by the lessee, the "total lease cost" of the contract without the variables included will obviously be much lower, yet the actual out of pocket outlay by the consumer could be much more. Furthermore, even if the proposed total lease cost disclosure were of value, it would be given at the time when it will be of little use to the consumer, since it will be provided at consummation. Consummation usually occurs when the lease is signed and by that time the consumer has already made the decision to lease.

Since a lease is a nonequity creating transaction, the total cost of the transaction is really irrevelant, except as a very loose comparison to the purchase alternative. Even that, however, is essentially an apples and oranges comparison since the purchase option includes interest deduction calculations and the intangible benefit of actually owning the property at the end of the contract, while a lease is merely a payment for the use of the property. Since this proposed disclosure is partially misleading, probably inaccurate, and definitely not material to the decision-making process, we submit that it should be eliminated and that the lessee be allowed to make his own evaluation cost of the lease based on the amount and timing of payments under the proposed contract.

Official Fees and Taxes

S.1152 also proposes to require the disclosure at the inception of the lease of the total amount that will be payable over the term of the lease in official fees and taxes, (assuming that these amounts are included in the monthly payment). The impossibility of such a requirement should be obvious. Registration and licensing fees change periodically. Tax rates change in concert with the fiscal needs of the governmental body imposing the levy, which in many cases can be with some regularity. In some areas where taxes are paid in arrears, the actual tax rate applicable to a piece of personal property may not even be known until several months after the lease is executed. Thus, to require the lessor to disclose these amounts three or four years in advance is manifestly impossible. The better approach, when fees or taxes are to be paid through the lessor is simply to disclose the amount of the official fees and taxes currently included in the initial or periodic payment, to the extent that they are known, with the clarification that future payments will contain a similar component, although the size of the component may vary due to changes in the rate structure of taxes or fees. Such an approach would notify the consumer what he is paying now and alert him to the fact that future payments may change. This approach would accomplish the goal of consumer notification while relieving the lessor of the obligation of attempting to estimate future taxes or insurance rates.

Civil Liability

We applaud the revision of the statute of limitations provision which essentially limits disclosure liability to one year from the date of occurrence. Likewise, the class action damages limitation would be welcome relief from a formerly inequitable statutory scheme. We would, however, like to see the limitation of statutory damages to only certain of the most relevant disclosures under the proposed statute. Such an approach would be consistent with the simplification of Truth in Lending. It would also serve to reemphasize the importance of the limited number of the key disclosures to which statutory damages were applicable and to avoid penalizing lessors who may make a less critical error on a less important disclosure. Under the proposed statute, even these less critical errors would subject a lessor to the same statutory penalties as one who had failed to make any disclosures.

We, therefore, feel that liability for statutory damages should be limited to the disclosures required in the federal box (except the total lease cost disclosure which we feel should be eliminated), disclosure of security deposits, expiration liability disclosure, early termination liability disclosure, and the disclosure of the right to an independent appraisal upon termination. Limitation of the statutory damages provisions to these key disclosures would, of course, in no way limit liability for actual damages incurred by a lessee due to erroneous disclosure. Lessors would remain fully liable for any actual damages incurred by a consumer due to improper compliance with the Act.

Relation to State Law

As introduced, S.1152 would preempt only those state laws with which it is impossible to comply without violating a portion of the federal law. That is to say, it is a very narrow standard and under it most state laws would be unaffected. The problem with this approach is that multi-state lessors then have to develop compliance programs for each state with differing regulations, thus, imposing additional cost and expense. In addition, the spectre of "information overload", again begins to loom large. If consumers receive both state and federal disclosures, confusion may be the only demonstrable result. We would, therefore, prefer to see a very broad preemption standard which would recognize the excellent work done by the Federal Reserve Board in determining what the most relevant disclosures are for consumers, and that would exempt lessors from making any state disclosures which are different from those federally required. In addition, we would prefer that anyone, not just the state, be able to ask the Federal Reserve Board for a determination of whether a particular state law is preempted. This approach would allow multi-state lessors to determine fairly quickly what the applicable law is in any given state.

I would like to thank you for this opportunity to make the views of the American Bankers Association known on S.1152. The staff of our Association looks forward to working with the staff of the Subcommittee to try and resolve our concerns with the bill. I stand ready to try and answer any questions the members of the Subcommittee may have. Thank you very much.

Senator **Hawkins**. Thank you.
Mr. Monteith.

STATEMENT OF ROBERT MONTEITH, SENIOR VICE PRESIDENT, CONSUMERS BANKERS ASSOCIATION, LOS ANGELES

Mr. **Monteith**. Good morning, Madam Chairman and Sena[illegible]. I am Bob Monteith, senior vice president of Security Pacific Natio[illegible] Bank of Los Angeles. As chairman of its committee on leasing, I am appearing on behalf of the Consumer Bankers Association.

Madam Chairman, I will summarize my written statement and limit my remarks to just 5 minutes.

In consumer leasing, our membership engages almost exclusively in long-term leases, particularly those for automobiles. Our members, working both directly and through holding companies, lease automobiles to consumers or buy leases generated by automobile dealers or independent leasing companies. Typical consumer-lessees are in their late thirties and earn, on average, about $33,000 a year.

Madam Chairman, despite many areas of agreement with the Federal Reserve Board, there are four critically important areas in which the bill drafted by CBA and attached to our written testimony differs from S. 1152.

IMPOSSIBLE TO ESTIMATE ACCURATELY LONG-TERM AUTOMOBILE LEASE

While moving toward reducing the number and confusion of disclosures, the Board's proposal still includes two disclosures for long-term leases that we believe are contrary to both the principles adopted by Congress in the Truth-in-Lending reform effort and the objective of providing consumers with meaningful and useful disclosures.

The first requires the continued disclosure of the total cost of official fees and taxes. These registration fees, license fees, and so forth often change from year to year. Thus, they are literally impossible to estimate accurately in the case of a long-term automobile lease, and the consumer would only be misled by a disclosure that purports to state their total at the start of the lease. Furthermore, this is not important shopping information, since the actual amounts of the fees and taxes are set by law. This disclosure presents substantial difficulties in the real world, and we urge that it not be adopted.

A second major problem involves the Board's proposed requirement of a new "total lease cost" disclosure for long-term leases. We join the Board's own Division of Research and Statistics in strongly urging the disclosure be eliminated. That Division recognized the difficulty and potential for deceiving consumers that would stem from the fact that the total cost, calculated in this manner, does not reflect differences in the amount and timing of payments or the amount of the security deposit and, therefore, inaccurately represents the consumer's true cost. By distracting the consumer's attention from other disclosures that would permit a consumer to assess the real cost of the leasee, this disclosure may well do more harm than good.

A second area of divergence involves the method of crediting consumers with depreciation during lease extensions. CBA's bill provides certainty and accountability for both consumer and lessor, by setting out a fair, simple, and precise formula for determining the amount of depreciation credit. We believe that this approach provides greater consumer protection, while facilitating compliance by lessors.

A third area of disagreement involves the scope of statutory damage liability. Under the Consumer Leasing Act, as under the Truth-in-Lending Act, statutory damages of $100 to $1,000 are awarded for violations of disclosure and other provisions, without any showing of actual injury or loss to the consumer. In 1980, Congress determined that statutory damages for credit disclosures should be available only for disclosure violations that were important for credit shopping, or that played a key "alert" function.

This determination is equally appropriate for the Consumer Leasing Act. CBA has delineated those disclosures and other requirements that are of such critical importance to consumers that statutory damages may be justified. We have faithfully followed the determinations reached by Congress when it reformed similar provisions under Truth-in-Lending.

The fourth and final area of divergence involves the relation bereached by Congress when it reformed similar provisions under Truth-in-Lending.

FEW STATES REQUIRE DISCLOSURES FOR LONG- AND SHORT-TERM LEASES

CBA's proposal would apply a new standard to excuse lessors from meeting State disclosure laws that relate to the specific terms and conditions of consumer leases. This standard would not result in the wholesale preemption of major State disclosure schemes. Relatively few States currently require disclosures for long-term leases, and even fewer require disclosures for short-term leases. The adoption of a broad preemption standard would be beneficial to both consumers and lessors.

A second area in which the CBA proposal would affect State laws relates to a small number of State laws and court decisions that attempt to regulate consumer leases by recharacterizing them as credit sales, loans, or secured transactions. The CBA proposal would only affect State laws to the extent that they recharacterize consumer leases, as defined by the act, as some other type of transaction.

In these four areas, CBA believes that S. 1152 should be revised in in order to assure usable and meaningful consumer lease disclosure.

Finally, Madam Chairman, I would like to address briefly CBA's proposed amendment to the National Bank Act, which would clarify the authority of national banks to engage in leasing. Currently, the leasing authority of national banks is a matter of interpretation and court decisions defining national banks' lending powers. Because of this patchwork approach to leasing authority, national banks are subject to certain limitations in their leasing activities that are designed to make leases the functional equivalent of loans. These limitations are unnecessary and burdensome, and should be relieved by making explicit the authority of national banks to engage in leasing activities.

In conclusion, the Consumer Leasing Act is very much in need of simplification. S. 1152 takes a major step in the correct direction. We believe, however, that the bill proposed by the CBA is even more consistent with those legislative determinations and would produce a ounder, more meaningful series of disclosures for consumers.

Thank you.

[Complete oral and prepared statements follows:]

ORAL

TESTIMONY OF
THE CONSUMER BANKERS ASSOCIATION
BEFORE THE
COMMITTEE ON BANKING, HOUSING
AND URBAN AFFAIRS
SUBCOMMITTEE ON CONSUMER AFFAIRS
UNITED STATES SENATE

HEARINGS ON
S. 1152 AND ALTERNATIVE PROPOSALS TO AMEND
THE CONSUMER LEASING ACT

Madame Chairman:

I am Robert Monteith, Senior Vice President of Security Pacific National Bank of Los Angeles. As the Chairman of its Committee on Leasing, I am appearing on behalf of The Consumer Bankers Association.*

In consumer leasing, our membership engages almost exclusively in long term leases, particularly those for automobiles. Our members, working both directly and through holding companies, lease automobiles to consumers or buy leases generated by automobile dealers or independent leasing companies. Typical consumer-lessees are in their late-30s and earn, on average, about $33,000 a year.

---

* The Association is a nonprofit organization that was organized in 1919 to provide a voice for the consumer banking industry. Today, membership in the Association is open to any federally insured depository institution, including commercial banks, thrifts, credit unions, and other providers of consumer financial services. Combined, the members of the Association now hold over 70% of all consumer credit outstanding.

All of these transactions involving consumers are subject to the Consumer Leasing Act, which was adopted in 1976. It amended the Truth in Lending Act to provide disclosures for consumer lease transactions. This Subcommittee is now considering applying to consumer leasing the simplification and reform policies adopted by Congress during the extensive revision of the Truth in Lending Act in 1980. The Consumer Bankers Association has spent a substantial amount of time reviewing and discussing the current law and suggestions for proposed changes. To help focus and resolve the issues presented, we have met on numerous occasions with the staffs of both the Board and this Committee to discuss legislation in this area. Our areas of disagreement have been further reduced as we have moved closer to the Board's bill, partially in an effort to focus on the most important issues, and partially in a spirit of accommodation with the Board. We believe this demonstrates our seriousness of purpose in attempting to pass this legislation. Our few continued areas of disagreement with the Board's proposal reflect the deeply felt positions of our organization. We hope that we will not be penalized in the legislative process for having already taken steps to conform our position as much as possible with that taken by the Board.

In addressing the alternatives for amending the statute, CBA is, as I mentioned, in complete agreement with most aspects of the Board's proposal. For instance, the Board's bill corrects the current provision on attorneys' fees. In lawsuits involving the consumer's end-of-term liability in an open-end lease, the lessor must now pay the consumer's attorneys' fees even if the lessor wins. This unfair burden is eliminated by S. 1152, which provides that the lessor pays the consumer's attorneys' fees only if the consumer is successful. In addition, the Board's bill would bring the Consumer Leasing Act's statute of limitations in line with that of the Truth in Lending Act and other consumer protection statutes. Further, both the Board's bill and our proposal would clarify that the existing three-payment limitation on the consumer's liability at the end of an open-end lease applies even if the lease is extended. This important consumer protection will prevent unscrupulous lessors from leaving consumers with a large end-of-lease liability.

Despite these and many other areas of agreement, there are four critically important areas in which the bill drafted by CBA and attached to our written testimony differs from S. 1152.

1. Disclosures. While moving towards reducing the number and confusion of disclosures, the Board's proposal

still includes two disclosures for long term leases that we believe are contrary to both the principles adopted by Congress in the Truth in Lending reform effort and the objective of providing consumers with meaningful and useful disclosures.

The first requires the continued disclosure of the total cost of official fees and taxes. These registration fees, license fees and so forth often change from year to year. Thus, they are literally impossible to estimate accurately in the case of a long term automobile lease, and the consumer would only be misled by a disclosure that purports to state their total at the start of the lease. Furthermore, this is not important shopping information, since the actual amounts of the fees and taxes are set by law. This disclosure presents substantial difficulties in the real world, and we urge that it not be adopted.

A second major problem involves the Board's proposed requirement of a new "total lease cost" disclosure for long term leases. We join the Board's own Division of Research and Statistics in strongly urging that the disclosure be eliminated. That Division recognized the difficulty and potential for deceiving consumers that would stem from the fact that the total cost, calculated in this manner, does not reflect differences in the amount and timing of payments or the amount of the security deposit and, therefore, inaccurately represents the consumer's true cost. By distracting the consumer's attention from other disclosures that would permit a consumer to assess the real cost of the lease, this disclosure may well do more harm than good.

2. Extensions. A second area of divergence involves the method of crediting consumers with depreciation during lease extensions. Both proposals require lessors to give the consumer the benefit of continued depreciation, however, they differ in the way in which it must be calculated. The Board would require a recalculation of the estimated residual value, using any "reasonable" method. CBA's bill provides certainty and accountability for both consumer and lessor, by setting out a fair, simple and precise formula for determining the amount of depreciation credit. We believe that this approach provides greater consumer protection, while facilitating compliance by lessors.

3. Statutory Damage Liability. A third area of disagreement involves the scope of statutory damage liability. Under the Consumer Leasing Act, as under the Truth in Lending Act, statutory damages of $100 to $1000 are awarded for violations of disclosure and other provisions, without any showing of actual injury or loss to the consumer. In 1980, Congress determined that statutory damages for credit disclosures should be available only for disclosure violations that were important for credit shopping, or that played a key "alert" function.

This determination is equally appropriate for the Consumer Leasing Act. CBA has delineated those disclosure and other requirements that are of such critical importance to consumers that statutory damages may be justified. We have faithfully followed the determinations reached by Congress when it reformed similar provisions under Truth in Lending.

4. State Laws. The fourth and final area of divergence involves the relation between the federal law and any state laws that require disclosures in connection with lease transactions. Currently, the Consumer Leasing Act provides for preemption of "inconsistent" state laws, except where the state law provides greater protection or benefit to the consumer. As a result, lessors make both the state and the federal disclosures, and so disclosure statements are long, complex and redundant.

The Board's proposal would make only a relatively minor change in that standard. CBA's proposal would apply a new standard to excuse lessors from meeting state disclosure laws that relate to the specific terms and conditions of consumer leases. This standard would not result in the wholesale preemption of major state disclosure schemes. Relatively few states currently require disclosures for long term leases, and even fewer require disclosures for short term leases. The adoption of a broad preemption standard would be beneficial to both consumers and lessors.

A second area in which the CBA proposal would affect state laws relates to a small number of state laws and court decisions that attempt to regulate consumer leases by recharacterizing them as credit sales, loans, or secured transactions. The CBA proposal would only affect state laws to the extent that they recharacterize consumer leases, as defined by the act, as some other type of transaction.

In these four areas, CBA believes that S. 1152 should be revised in order to assure useable and meaningful consumer lease disclosure.

Finally, Madame Chairman, I would like to address briefly CBA's proposed amendment to the National Bank Act, which would clarify the authority of national banks to engage in leasing. Currently, the leasing authority of national banks is a matter of interpretation and court decisions defining national banks' lending powers. Because of this patchwork approach to leasing authority, national banks are subject to certain limitations in their leasing activities that are designed to make leases the functional equivalent of loans. These limitations are unnecessary and burdensome, and should be relieved by making explicit the authority of national banks to engage in leasing activities.

In conclusion, the Consumer Leasing Act is very much in need of simplification. S. 1152 takes a major step in the correct direction. We believe, however, that the bill proposed by the CBA is even more consistent with those legislative determinations and would produce a sounder, more meaningful series of disclosures for consumers.

Thank you.

TESTIMONY OF
THE CONSUMER BANKERS ASSOCIATION
BEFORE THE
COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS
SUBCOMMITTEE ON CONSUMER AFFAIRS
UNITED STATES SENATE

HEARINGS ON
S. 1152 AND ALTERNATIVE PROPOSALS TO AMEND THE CONSUMER LEASING ACT

Madame Chairman:

I am Robert Monteith, Senior Vice President of Security Pacific National Bank of Los Angeles. As the Chairman of its Committee on Leasing, I am appearing on behalf of The Consumer Bankers Association.* The Consumer Bankers Association commends you and the members of your Subcommittee for addressing the need to reevaluate both the substance and scope of the Consumer Leasing Act.

The Consumer Leasing Act was adopted in 1976 and implemented in March of 1977 to provide disclosures for consumer lease transactions recognized by Congress as an increasingly popular alternative to instalment credit transactions. Lease provisions were simply incorporated together with the Truth in Lending Act and Regulation Z, the regulation that implements that act. As you know, the Truth in Lending Act underwent extensive revision in 1980, after more than three years of study and deliberation by the Members of this Committee. In view of the magnitude of the task of rewriting all of the disclosure rules affecting credit, Congress decided to postpone suggested revisions to the leasing provisions. As a result, the numerous determinations made by Congress as they relate to credit transactions have not yet been reflected in the Consumer Leasing Act. In a non-substantive first step in this process, the Federal Reserve Board has already reorganized its regulations to place the leasing provisions in an independent regulation, Regulation M.

---

* The Association is a nonprofit organization that was organized in 1919 to provide a voice for the consumer banking industry. Today, membership in the Association is open to any federally insured depository institution, including commercial banks, thrifts, credit unions, and other providers of consumer financial services. Combined, the members of the Association now hold over 70% of all consumer credit outstanding.

This Subcommittee is now considering applying these same simplification and reform policies to consumer leasing. While in large part the current rules have performed their intended role, a number of areas -- including the number and detail of disclosures, the statute of limitations provision, statutory damage liability, and a provision regarding payment of attorneys' fees -- are badly in need of attention and revision. Many of these issues would be resolved by legislation drafted by the Federal Reserve Board and introduced by you, Madame Chairman, on April 27 as S. 1152. In other ways, however, the Board's proposal falls short of the goal of reforming the Consumer Leasing Act in a comprehensive way and of extending to this area the determinations reached by Congress during the simplification of the Truth in Lending Act. The Board itself recognized the likely need for further amendments to its proposal in its transmittal letter to Senator Garn.

In response to this Subcommittee's request that we appear and present our views, The Consumer Bankers Association has spent a substantial amount of time reviewing and discussing the present law and suggestions for proposed changes. Over the past months, we have met on a number of occasions with members of the Federal Reserve Board staff and the staff of this Subcommittee to share ideas and concerns about the legislation. While initially there were substantial areas of disagreement in approach, we have, since the introduction of S. 1152, eliminated some of the areas of divergence after much discussion with our members. We have moved closer to the approach taken by the Board, in part in an effort to focus on the most important issues involved in this legislation, and in part in a spirit of accommodation with the Board that, we hope, will demonstrate our seriousness of purpose in attempting to pass this legislation.

We therefore come to these hearings having completed a lengthy process of revising and refining our position. Our areas of agreement and disagreement with the Board's proposal, which I will discuss this morning, reflect the policy decisions of our organization whose membership includes most of the major federally regulated financial institutions involved in consumer leasing. We hope that we will not be penalized in the legislative process for having already taken steps to conform our position as much as possible with that taken by the Board.

We have attached to our testimony our proposal for amendments to the Consumer Leasing Act (marked as Appendix A), together with a section-by-section analysis explaining the proposal's key provisions (marked as Appendix B). While our proposal, like the Board's, extends the coverage of the current act to leases of four months or less, our membership at this point engages exclusively in long term leasing, for instance, of automobiles. Therefore, my remarks this morning will be addressed in most cases to the provisions of the Board proposal and the CBA bill that relate to long term leasing.

Background

A little background on the nature of leasing by financial institutions may be helpful. Financial institution leasing tends to be regional in nature. It is concentrated in large part in the Western states and particularly my home state of California. As noted, financial institutions engage almost exclusively in long term automobile leasing, either directly leasing cars to consumers and businesses, leasing through holding company affiliates or subsidiaries, or buying leases made by automobile dealers or independent leasing companies.

There are two types of automobile leases, based on the consumer's liability at the end of the lease. In an open-end lease, the lessee bears the risk of any depreciation that occurs during the term of the lease, although in consumer leases current law generally limits this risk to the total of three monthly payments. In closed-end leases, the consumer is not liable at the end of the lease for market depreciation that has occurred during the lease term. While financial institutions have traditionally offered open-end leases, more and more financial institutions are engaging in closed-end leasing, and we expect that this will continue to be the predominant trend over the next decade.

A consumer who leases a car is, in an important way, obtaining a different product than a car purchaser. The lessor normally requires little or no downpayment, freeing up capital the consumer would otherwise tie up in a car purchase. The lessor also provides various services, sometimes including service contracts covering the vehicle. A person leasing directly from a bank or from a leasing company subsidiary of a bank holding company merely informs the lessor of the vehicle he or she desires, and the lessor takes care of ordering and obtaining the car. At the end of the lease, the consumer simply returns it to the lessor.

Areas of Substantial Agreement

Against this background, it is appropriate to address the alternative proposals for amending the existing statute and specifically the provisions of S. 1152 and the CBA proposal. As I mentioned, there are a large number of areas in which CBA is in complete agreement with the Federal Reserve Board's proposal, as we have tried to move closer to the Board's position.

First, CBA endorses the concept of applying disclosure and other provisions to short term lessors. This growing industry should clearly be under some form of federal disclosure regulation, whether as part of the Consumer Leasing Act or a separate title to the Consumer Credit Protection Act. The CBA proposal does contain some minor differences in approach from that taken in S. 1152, but on the basic question of regulating disclosure and advertising terms we are in substantial agreement.

Second, in the area of disclosures, the Board has greatly reduced the number and complexity of disclosures required in connection with long term leases. This too is consonant with the approach taken by CBA. As with the simplification of the Truth in Lending Act, simplification of disclosures required for leases will focus consumers' attention on those matters of critical importance.

Third, both the Board's bill and ours correct a problem that has existed since the inception of the Consumer Leasing Act that relates to payment of attorneys' fees. Consumers in open-end leases are liable for the difference between the realized value of the leased property at the end of the lease, and the lessor's estimate of that value made at the beginning of the lease. If that difference exceeds the sum of three monthly lease payments, however, the lessor may have to go to court to prove that the initial estimate was reasonable. The current act provides that in such a court action, the lessor must pay the consumer's attorneys' fees even if the lessor wins. This provision appears to be unique in federal law, and creates an unfair burden to lessors seeking to obtain their rights under their contracts. S. 1152 properly corrects this problem by providing that the lessor is responsible for the consumer's attorneys' fees only if the consumer is successful.

Fourth, the Board's bill reduces substantially the requirements under the advertising provisions for long term leases. The terms "triggered" under the bill by certain statements in the lease advertisement are in our view appropriate, and much of the complexity of the existing law is eliminated.

Fifth, the Board's bill would bring the Consumer Leasing Act's statute of limitations in line with that of the Truth in Lending Act and other consumer protection statutes. Currently, the Consumer Leasing Act permits civil actions to be brought until one year after the end of the lease. This means that a lessor in a four year lease is subject to suit on disclosure violations for a full five years after the disclosures were made.

Both the Board's bill and ours would end this rule. The Board's bill would permit civil suits on most provisions of the act to be brought within one year of the occurrence of the violation. Violations of the provisions of Section 113 of the bill, relating to the consumer's liability protections, could be brought within one year of the end of the lease. While we believe that this exception should be limited to violations of the three payments rule, we generally endorse the the statute of limitations provision of S. 1152.

There are also a number of other areas of agreement, and in fact the CBA proposal is, as I have mentioned, very similar in most respects to S. 1152. Nonetheless, there are some areas in which our bill provides different rules or provisions than those in S. 1152. It is to those provisions that I now turn.

Disclosures for Long Term Leases

The Board proposal has moved a long way toward the goal of reducing the number and confusion of disclosures required by the Consumer Leasing Act. It still, however, includes two disclosures for long term leases that we believe are contrary to both the principles adopted by Congress in the Truth in Lending reform effort and the objective of providing consumers with meaningful and useable disclosures.

The first requires the continued disclosure of the total cost of official fees and taxes. These costs are extremely difficult to estimate accurately in the case of a long term automobile lease, and we feel that the consumer would only be misled by a disclosure that states their estimated total at the outset of the lease term. Registration fees, license fees and so forth often change from year to year. Thus, providing a helpful estimate in a lease of more than one year, as most long-term leases are, is virtually impossible. This is an even greater problem with respect to personal property and sales taxes, which often differ not only from state to state but from county to county, and are set annually in response to local revenue requirements.

The information that the estimated dollar amount provides to the consumer is, therefore, almost certainly going to be inaccurate. Furthermore, the information is not important to a consumer shopping for the best lease. While it might be important for the consumer to know who is responsible for the taxes and fees, or whether he will pay the fees through the lessor or independently, the actual amount of the fees and taxes are set by law and as such are valueless in lease shopping. The disclosure presents substantial difficulties in the real world, and we urge this Subcommittee to end this unnecessary requirement.

A more difficult problem is presented by the Board's proposed requirement of a "total lease cost" disclosure for long term leases. The total lease cost would be the undiscounted sum of all payments, calculated by adding all initial payments, all periodic payments, and all payments due at the end of the lease term. The Division of Research and Statistics at the Federal Reserve Board strongly argued that the disclosure should be deleted. That Division recognized the difficulty and potential for deceiving consumers that would stem from the fact that the total cost, calculated in this manner, does not reflect differences in the amount and timing of payments and, therefore, inaccurately represents the consumer's opportunity cost of funds. The disclosure also totally ignores the role of security deposits in quantifying the true cost of the lease to the consumer. In other words, a lease with a large initial payment, smaller monthly payments and a large security deposit can result in the same "total lease cost" disclosure as one with small initial payments, larger monthly payments and a small security deposit. But the second lease may be substantially less expensive than the first, since it ties up less of the consumer's money over the term of the lease.

The section-by-section analysis accompanying the Board's proposal recognizes this imperfection, but justifies the disclosure on the basis that the other information necessary for the consumer to determine which lease is actually less expensive is given by the other disclosures. I have dealt with a great many consumer-lessees over the years, and based on my experience this is not what will happen. A consumer who sees one lease disclosure that says "total lease cost: $4956.85" and another that says "total lease cost: $4841.93" is not going to stop to calculate his or her opportunity cost of funds. The fact that the number is a federally-required disclosure will only add to the consumer's assumption that the second lease is less expensive. In addition, placing one more disclosure of questionable validity and use before the consumer will clearly be a distraction from other disclosures that would give the consumer an indication of the economic shape of the transaction and how various leases compare. Thus, the addition of this requirement would not only fail to provide consumers with useable information but would detract from the accurate, helpful information that is given.

At the same time, there is no practical way to provide the consumer with an accurate disclosure reflecting the cost of the lease. This was recognized explicitly by the Board's Division of Research and Statistics, which pointed out that in order to assure truly comparable disclosures a standardized lease structure would have to be imposed on the industry. It was implicitly recognized by the Board itself, which despite the internal criticism of the total lease cost disclosure did not attempt to devise an alternative method of comparing cost.

We believe consumers are given sufficient information to reach their own conclusions about which lease is best for them. It is a simple task for them to add up the components of the Board's total lease cost disclosure if they feel that would be helpful. To make it a required disclosure carries with it an implicit statement that the figure represents the true cost of the lease that can be compared with other leases to determine which is the least expensive. As demonstrated by the Board's economists, it does not do so. We feel consumers would only be misled by this disclosure.

Depreciation and Extensions

The next area of concern is that of extensions. Often, consumers at the end of a long term lease will want to keep their cars for an additional few months or a year by extending the lease. Under current law, an extension of more than six months is treated as a new transaction, requiring new disclosures.

Both the Board and the CBA proposals would do away with further disclosures upon extention of a long term lease. Both bills, however, would require lessors to give consumers the benefit of continued depreciation in open-end leases.

The two bills differ in the way the continued depreciation must be calculated. We believe that CBA's proposal presents less opportunity for abuse, while at the same time providing lessors with more precision and definition with respect to their obligations under the law and lessees with a greater amount of protection from end of lease liability.

At the outset of an open-end lease, the lessor must estimate the anticipated residual value of the property as of the scheduled termination of the lease. The consumer is then responsible for the difference between that estimated amount and the actual realized value at the end of the lease. (This liability is generally limited to three monthly payments.) Under S. 1152, when an open-end lease is extended by more than one month the lessor must recalculate the anticipated residual value for purposes of determining the consumer's liability at the end of the lease term. The bill does not specify how the calculation is to be carried out, and the section-by-section analysis indicates that any reasonable method may be used.

It should be noted, however, that the lessor is never required to reveal to the consumer the revised anticipated residual value or how it was calculated. It would therefore be difficult for a consumer to know whether that calculation was in fact "reasonable" -- a standard, incidentally, that does not even appear in the proposed legislation. In addition, this type of non-specific directive is precisely the type of requirement that leads to confusion and difficulty among lessors who are trying to comply with the law. Many would prefer to follow a required formula rather than try to determine on their own what is "reasonable."

CBA's bill takes an approach that provides both certainty and accountability for both lessee and lessor. It sets out a formula for determining the amount of depreciation credit to be given for each month of the extension. The amount is simply determined by dividing the expected depreciation over the scheduled term of the lease by the number of scheduled payments originally contemplated. This average depreciation figure -- which many leases already disclose -- would then be applied during each month of the extension to reduce the consumer's end-of-lease liability. As under the Board's proposal, the consumer would continue to be protected by the so-called "three payment rule." We believe that this approach provides greater consumer protection, while facilitating compliance by lessors.

Civil Liability

Under the Consumer Leasing Act, as under the Truth in Lending Act, statutory damages of $100 to $1000 may be awarded for violations of disclosure and other provisions. Although some form of statutory damages seems firmly entrenched in the consumer credit area, these damage awards in fact involve a radical departure from the normal rule in civil litigation, since they may be awarded without any showing of actual injury or loss to the consumer.

The statutory damage provision resulted in a massive number of lawsuits under the Truth in Lending Act, and when that act was revised in 1980 it was determined that statutory damages should be available only for violations of truly important disclosure or other requirements. Section 130 of the Truth in Lending Act was amended to specify those disclosure terms that were so important for credit shopping, or that played such a key "alert" function, that their violation should give rise to statutory damage liability.

This determination should be made in the Consumer Leasing Act as well. The Board, which historically has held the view that its involvement with civil liability questions would be inappropriate, would continue the current law under the Consumer Leasing Act and permit statutory damages to be awarded for any violation of the act (excluding only the advertising requirements). In our proposed legislation, CBA has attempted to delineate those disclosure and other requirements that are of such key importance to consumers that statutory damages may be justified. In doing so, we believe that we have faithfully followed the determinations reached by Congress when it reformed the comparable provisions that apply under Truth in Lending. Under both versions, actual damages, costs, and attorneys' fees would continue to be available to all successful consumers for any violation of the act.

CBA proposes that statutory damages be available only for the following violations:

-- failure to make disclosures
-- failure to comply with the timing requirements for disclosures
-- in long term leases, failure properly to disclose
  °initial payments
  °payment schedule
  °liability upon scheduled expiration, and
  °the special open-end lease disclosures
-- failure to comply with the substantive protections relating to the three-payment rule and the consumer's appraisal rights
-- in short term leases, failure properly to disclose
  °the payment schedule
  °the requirements for ownership
  °the disclosure concerning equity in the property
  °the consumer's responsibility for lost, damaged or stolen property, and

We believe these provisions are the most important ones to consumers, and that statutory damages, if justified at all, are most justified in connection with them. Once again, this suggested resolution merely incorporates the Congressional decisions made in the Truth in Lending Simplification and Reform Act.

It is true that lessors have not yet experienced the flood of litigation associated with the Truth in Lending Act statutory damage provision. We believe, however, that the Consumer Leasing Act, as a basically parallel statute, provides the same opportunity for abusive and nuisance litigation. Further, as leasing becomes more popular the lure of statutory damages for minor, technical violations will bring a correspondingly larger number of nuisance suits before the courts. We believe that the limitation on the availability of statutory damages should be an important element of any revision of the Consumer Leasing Act.

The Federal Reserve Board's proposal also departs from the Truth in Lending Act by imposing civil liability for violations of the advertising requirements of the Consumer Leasing Act. To us, it is inappropriate for lessors to be liable for advertising violations when creditors are exempt from the same liability. The advertising provisions are typically enforced under the Truth in Lending Act, at least with respect to financial institutions, in the course of normal examination by state and federal financial institution regulators. The Federal Trade Commission has authority to enforce the advertising requirements against other creditors and lessors. These mechanisms operate no differently in the leasing area, where the same agencies have the same enforcement authority. There appears to be no reason to invite civil litigation by consumers as well.

Relation to State Laws

A perennially troublesome issue with any federal disclosure statute is the relation between the federal law and any state laws that require disclosures in connection with the same transactions. The current Consumer Leasing Act provisions regarding state laws provide for preemption of "inconsistent" state laws, except where the state law provides greater protection or benefit to consumers. The result is that lessors in states with state disclosure laws are generally required to make both the state and the federal disclosures, and disclosure statements are long, complex and redundant.

The Board's proposal would make a relatively minor change in the standard by which state laws are determined to be inapplicable. It would eliminate the current law's "greater protection or benefit" standard from the federal preemption provision, but would continue to exempt lessors from state requirements only to the extent that those requirements are inconsistent with federally mandated disclosures. If that standard is interpreted by the Board in the way the identical standard is interpreted under the Truth in Lending Act, the Board would preempt only those state laws that directly contradict federal disclosure provisions. Thus, it would still result in lessors having to comply with federal disclosures and whatever additional disclosures are imposed by state law.

While most states do not have a leasing disclosure law, those that do frequently require many of the disclosures that are now required by the Consumer Leasing Act. A number of those disclosures would be eliminated by passage of either S. 1152 or the CBA bill, due to a Congressional determination that the marginal information they provide is not offset by the confusion and "information overload" they create. Unless lessors are exempted from the requirements of those state laws, those Congressional determinations will be rendered meaningless in those states requiring additional disclosures, and consumers in those states will continue to receive disclosures that are confusing, excessive and redundant.

In fact, the problem may even be exacerbated by the passage of amendments. Both S. 1152 and the CBA proposal would segregate the federally mandated disclosures into a "federal box" similar to that required under Truth in Lending. When additional terms are required by state law, these would have to be disclosed outside the federal box, thus adding to the length and confusion of the lease documents.

CBA's proposal attempts to deal with these problems by establishing a new standard for determining exemption from state law requirements. Under CBA's proposal, lessors would be exempted from compliance with state disclosure laws that relate to the specific terms and conditions of consumer leases. Under this standard, state laws requiring more disclosures, different disclosures, or more detailed disclosures concerning consumer leases would be preempted. An exception would be made for those state-required disclosures that relate to terms and conditions specifically imposed by state law. For example, a state disclosure provision that required disclosure of the lessor's warranties would be preempted because it relates to the terms and conditions of a consumer lease. However, if the state required a particular warranty to be given, and also required a disclosure relating to that state-imposed warranty, failure to make that disclosure could lead to liability under the state law.

Adoption of this standard would not, it should be emphasized, result in the wholesale preemption of major state disclosure schemes. Relatively few states currently require disclosures for long term leases, and even fewer require such disclosures for short term leases. A number of those states that do require disclosure, moreover, adopted their disclosure laws before the enactment of the Consumer Leasing Act. Both the 1969 and the 1974 versions of the Uniform Consumer Credit Code include leasing disclosures, and while they do not explicitly defer to federal law as they do with respect to credit cost disclosures, that should not be read as a state determination in favor of duplicative disclosures. Rather, the lack of a deferral provision is undoubtedly due to the fact that at the time these uniform laws were drafted, there was no federal legislation in the area to which to defer.

We believe that adoption of a broad preemption standard would be beneficial to both consumers and lessors. Consumers would be spared the complex and lengthy disclosures imposed by state requirements, and would have their attention properly focused on the key disclosures required by federal law. Lessors would be spared the expense and anxiety associated with compliance with both state and federal law, and those operating in more than one state would be able to use one set of forms rather than having to produce separate forms for each state.

The Consumer Leasing Act is an appropriate context in which to experiment with this new preemption standard. The standard would displace the laws of relatively few states. At the same time, it would give Congress an opportunity to examine a different type of preemption provision. Annual reports provided by the Federal Reserve would keep Congress informed of developments in the area, permitting a reassessment of the broader preemption standard if that appears warranted in the future.

A second area in which the CBA proposal would affect state laws relates to a small number of state laws and court decisions that attempt to regulate consumer leases by recharacterizing them as credit sales, loans, or secured transactions. These state laws subject consumer leases to substantive regulation through the back door, as it were. The difficulty presented by these laws and decisions is that the provisions were designed for very different transactions, and make no sense in the context of leasing.

The section would not in any way prevent a state from regulating consumer leases "through the front door." A state could still, obviously, decide that consumer leases as such should be subject to substantive limitations or regulations applicable specifically to them. The CBA proposal would only affect state laws to the extent that they recharacterize consumer leases, as defined by the act, as some other type of transaction. It is in that sense similar to, but less invasive than, the provision of the Cash Discount Act that prohibits states from characterizing cash discounts as a finance charge for purposes of the state's usury or other laws.

With the exception of the recharacterization provision, CBA's draft legislation generally follows the approach taken by the Board in preempting only those state laws relating to disclosure requirements. We do believe, however, that in those areas of law where the federal government has considered, analyzed and made clear judgments and decisions, its determinations should be uniformly applied without regard to state law. That statement reflects nothing more than the general rule that applies in all cases in which federal and state laws overlap and merely restates the Supremacy Clause found in the United States Constitution. We believe that this principle is as valid in the area of substantive rights and obligations as it is in the area of disclosure responsibilities. We would therefore urge this Subcommittee to consider adopting, at least on an experimental basis, a federal preemption standard that would override substantive state laws that differ from those provisions specifically considered and adopted by Congress in this legislation. In this as in all other areas when Congress has legislated, its decisions should be the final word on the issue being addressed.

National Bank Act Amendment

I would like to address briefly CBA's proposed amendment to the National Bank Act, which is also contained in our legislative proposal. CBA's proposal would add an additional paragraph to Section 5136 of the Revised Statutes, clarifying the authority of national banks to engage in leasing. Currently, the leasing authority of national banks is a matter of interpretation and court decisions defining national banks' lending powers. Because of this patchwork approach to leasing authority, national banks are subject to certain limitations in their leasing activities that are designed to make leases the functional equivalent of loans. These limitations are unnecessary and burdensome, and should be relieved by making explicit the authority of national banks to engage in leasing activities.

Conclusion

The Consumer Leasing Act has had a relatively successful history. However, it has never been subject to further Congressional scrutiny. It is very much in need of simplification and reform to apply to it the determinations made concerning consumer credit disclosures during the reform and simplification of the Truth in Lending Act. S. 1152 takes a major and badly needed step in the correct direction. We believe the bill proposed by The Consumer Bankers Association is even more consistent with those legislative determinations.

Thank you.

APPENDIX A

TITLE X - CONSUMER LEASING ACT

Chapter 1 - General Provisions

SECTION 1001 - Short Title

This title may be cited as the Consumer Leasing Act of 1983.

SECTION 1002 - Findings and Declaration of Purpose

(a) The Congress finds that the leasing of personal property by consumers continues to be a popular alternative to installment credit purchases. It is a purpose of this title to assure the meaningful disclosure of certain provisions of leases of personal property for personal, family or household purposes for a term exceeding four months, permitting the consumer to compare more readily the various lease terms available; to limit any liability a consumer may have at scheduled expiration for the estimated residual value of the leased property to a reasonable amount; and to assure accurate disclosure of lease terms in advertising.

(b) The Congress also finds that a significant number of consumers have begun to lease personal property through agreements that provide for an initial term not exceeding four months, the term of which at the consumer's discretion is renewable with each payment, and that permit the consumer to become the owner of the property by exercise of a purchase option or after making a specified number of lease payments. It is a purpose of this title to assure meaningful disclosure of certain provisions of such leases, permitting the consumer to compare more readily the various lease terms available; and to assure accurate disclosure of the lease terms in advertising.

SECTION 1003 - Definitions and Rules of Construction

(a) The following definitions apply to this title:

(1) "Advertisement" means a commercial message in any medium that promotes, directly or indirectly, a consumer lease.

(2) "Agricultural purposes" includes the production, harvest, exhibition, marketing, transportation, processing, and manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures those agricultural products including, but not

limited to, the acquisition of farmlands, real property with a farm residence, and personal property and services used primarily in farming.

(3) "Board" means the Board of Governors of the Federal Reserve System.

(4) "Consumer" means a natural person who leases personal property under a consumer lease.

(5) "Consumer lease" means a contract in the form of a lease or bailment for the use of personal property, and the purchase of services incidental thereto, by a natural person primarily for personal, family, or household purposes and for a total contractual obligation not exceeding $25,000, which is either:

(A) for an initial term exceeding four months, whether or not the consumer has the option to purchase or otherwise become the owner of the property at the scheduled expiration of the lease, which for the purposes of this title shall be referred to as a "long term lease;" or

(B) for an initial term of four months or less which at the consumer's election is renewable upon the lessor's receipt of an additional periodic payment and which permits the consumer to become the owner of the property either upon the exercise of a purchase option or upon the receipt by the lessor of a designated number of periodic payments, which for the purposes of this title shall be referred to as a "short term lease."

The term shall not include a "credit sale" as defined in Title I of this act.

(6) "Consummation" means the time a consumer becomes contractually obligated on a consumer lease.

(7) "Lessor" means (A) a person who regularly provides for the use of property through consumer leases and to whom the lease obligation is initially payable on the face of the contract, and (B) a person who regularly arranges for consumer leases.

(8) "Personal property" means any property that is not real property under the laws of the State in which it is located when it is made available for a consumer lease.

(9) "State" refers to any State, the Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of the United States.

(b) Unless the context indicates otherwise, the term "lease" means any consumer lease contemplated by subsection (a)(5), including both a long term lease as defined in the above subsection (a)(5)(A), and a short term lease as defined in the above subsection (a)(5)(B).

(c) Any reference to any provision of this title includes reference to the regulations of the Board under this title.

(d) The disclosure of an amount or number that is greater than the amount or number required to be disclosed under this title does not in itself constitute a violation of this title.

SECTION 1004 - Exempted Transactions

This title does not apply to the following:

(1) A lease or bailment of personal property for business, commercial, or agricultural purposes, or to a government or governmental agency or instrumentality or to an organization, which includes a corporation, partnership, proprietorship, association, co-operative, estate, or trust.

(2) A lease of a safe deposit box.

(3) A lease or bailment of personal property that is incidental to the lease of real property and that provides that the consumer has no liability for the value of the property at scheduled expiration except for abnormal wear and tear, and the consumer has no option to purchase the leased property.

SECTION 1005 - Regulations

(a) The Board shall prescribe regulations to carry out the purposes of this title. These regulations may contain such classifications, differentiations, or other provisions, and may provide for adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this title, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

(b) The Board shall publish model disclosure forms and clauses for common transactions to facilitate compliance with the disclosure requirements of this title and to aid the consumer in understanding the transaction. In designing forms, the Board shall consider the use by lessors of data processing or similar automated equipment. Use of the models by a lessor shall be optional. A lessor shall be deemed to be in compliance with the disclosure provisions of this title with respect to other than numerical disclosures if the lessor (1) uses any appropriate model form or clause as published by the Board, or (2) uses any such model form or clause and changes it by (A) deleting any information which is not required by this title, or (B) rearranging the format, if in making such deletion or rearranging the format, the lessor does not materially affect the substance, clarity, or meaningful sequence of the disclosure. Model disclosure forms and clauses shall be adopted by the Board after notice duly given in the Federal Register and an opportunity for public comment in accordance with section 553 of title 5, United States Code.

(c) Any regulation of the Board, or any amendment or interpretation thereof, that requires a disclosure different from the disclosures previously required shall have an effective date of the October 1 that follows the date of promulgation by at least six months. The Board may at its discretion lengthen that period of time to permit lessors to adjust their forms to accommodate new requirements; the Board may also shorten that period of time if it makes a specific finding that such action is necessary to comply with the findings of a court or to prevent unfair or deceptive practices. In any case, lessors may comply with any newly promulgated disclosure requirement prior to its effective date.

Chapter 2 - Long Term and Short Term Leases

SECTION 1011 - General Requirements of Disclosure

(a) The lessor shall disclose to the consumer the information required by this title. In a transaction involving more than one consumer, a lessor need not disclose to more than one of the consumers if the consumer who is given disclosures is a primary obligor. In a transaction involving more than one lessor, only one lessor need make the disclosures.

(b) The disclosures required by sections 1012 and 1014 shall be made at or before consummation of the consumer lease.

(c) The disclosures shall be made clearly and conspicuously in writing, in a form that the consumer may keep. The disclosures required under sections 1012 and 1014 shall be segregated from all other terms, data, or information provided. A lessor may supply additional information or explanations in any location other than together with the segregated disclosures except as the Board may permit such additional information or explanations to be included with the segregated disclosures.

(d) The Board shall provide by regulation that any portion of the information required to be disclosed by this title may be given in the form of estimates where the provider of such information is not reasonably available to such person.

(e) If information disclosed in accordance with this title is subsequently rendered inaccurate as the result of any act, occurrence, or agreement subsequent to the delivery of the required disclosures, the resulting inaccuracy shall not constitute a violation of this title.

SECTION 1012 - Long Term Lease Disclosures

For each long term lease, the lessor shall disclose the following items, as applicable:

(1) The total amount of any payments to be made by the consumer at or before consummation or delivery of the property, whichever is later.

(2) The number, amount and due dates or periods of payments under the lease to be made by the consumer after the later of consummation or delivery of the property and the total amount of such periodic payments.

(3) Any dollar charge or percentage amount that may be imposed by the lessor due to a late periodic payment, other than a deferral or extension charge.

(4)(A) When the consumer buys required insurance from or through the lessor, the premium amount and whether it is included in the numerical disclosures required by items (1) or (2).

(B) When the consumer does not buy required insurance from or through the lessor, a statement that the consumer must buy insurance and that the premium is not included in the numerical disclosures required by items (1) or (2).

(5) The amount of any required security deposit.

(6) A statement that the consumer may be liable for additional amounts if the lease is terminated early.

(7) Either a general statement of the consumer's liability or a total of amounts payable at the scheduled expiration of the lease. In either case, the disclosures need not include any liability of the consumer for the difference between the anticipated residual value and the realized value of the property.

(8) When the consumer's liability at the scheduled expiration of the lease is based on the anticipated residual value of the property at that time:

(A) The anticipated residual value of the property at scheduled expiration of the lease;

(B) A brief statement of the consumer's potential liability at scheduled expiration of the lease term or, if there is an extension, at the end of the lease for the difference between the anticipated residual value and the realized value;

(C) The product of three times the average periodic payment allocable to a month; and

(D) A statement that the consumer's liability under item (8)(B) may be limited to item (8)(C), unless (i) the excess is a result of excessive use or unreasonable wear and use, (ii) the lessor brings a successful court action proving that the estimate of the anticipated residual value was reasonable, or (iii) the consumer agrees to pay such excess, provided the agreement is made after the scheduled expiration of the lease.

(9) Whenever the consumer's liability is based on the realized value of the property, a statement that the consumer may have the property appraised at the consumer's expense by an independent third party agreed to by both the consumer and lessor, and that the consumer and lessor will be bound by the appraisal.

(10) A statement that the consumer may have other costs and that the consumer should refer to the appropriate lease document for further information.

SECTION 1013 - Consumer's Liability Protections

(a) When a consumer's liability at the scheduled expiration of a long term lease or, if there has been an extension, at the end of the lease is based on the anticipated residual value of the property, the anticipated residual value shall be a reasonable estimate of the actual residual value of the property at the scheduled expiration of the lease. There shall be a rebuttable presumption that the anticipated residual value is unreasonable to the extent that it exceeds the realized value of the property at the end of the lease by more than three times the average payment allocable to a month. The lessor shall not collect any amount in excess of three times the average payment allocable to a month unless the lessor brings a successful action in court proving that the estimate was reasonable. If the lessor fails to rebut the presumption, the lessor must pay the costs of the action and the consumer's reasonable attorney's fees.

(b) The presumption in subsection (a) shall not apply to the extent that the excess of the anticipated residual value over the realized value is due to damage to the property beyond reasonable wear and use or to excessive use. The lessor may establish reasonable standards for wear and use and excessive use in a long term lease.

(c) Subsection (a) does not preclude the right of a willing consumer and lessor to make a mutually agreeable final adjustment with respect to the excess of three times the average periodic payment allocable to a month, provided the agreement is made after the scheduled expiration of a long term lease.

(d) The lessor may specify in a consumer lease penalties or other charges for delinquency, default, or early termination, if the amounts are reasonable in light of the anticipated or actual harm or costs occasioned by the delinquency, default, or early termination, and the lack of, or difficulty of obtaining, an adequate remedy.

(e) Whenever a consumer's liability under a long term lease is based on the realized value of the property, the consumer may obtain at the consumer's expense a professional appraisal of the property by an independent third party agreed to by both parties. This appraisal shall be binding on both of the parties.

SECTION 1014 - Short Term Lease Disclosures

For each short term lease agreement, the lessor shall disclose the following items, as applicable:

(1) The amounts and timing of payments.

(2) The number of payments and the total amount of the payments necessary to acquire ownership of the property and a statement that the consumer has the option to purchase the property and at what time.

(3) A statement that the consumer will not own the property if the consumer does not make the number of payments and the total amount of the payments necessary to acquire ownership or if the consumer does not otherwise satisfy the terms of the purchase option.

(4) A statement that the total of payments does not include other charges, such as late payment, default, pick-up, and reinstatement fees, [illegible] that the consumer should see the contract for an explanation of these charges.

(5) A statement that the consumer is responsible for the fair market value of the property if it is lost, stolen, damaged or destroyed.

SECTION 1015 - Renegotiations and Extensions

(a) A renegotiation occurs when an existing consumer lease is satisfied and replaced by a new lease undertaken by the same lessor and consumer. A renegotiation is a new lease requiring new disclosures. However, events such as the following shall not be treated as renegotiations:

(1) The addition or return of property in a multiple-item lease or the substitution of the leased property provided that in either case the average payment allocable to a payment period is not changed by more than 25 per centum.

(2) A deferral or extension of one or more periodic payments, or portions of a periodic payment.

(3) A reduction in charges in the lease.

(4) A lease involving a court proceeding.

(b) No disclosures are required in connection with the extension of a consumer lease. When there is an extension of a long term lease which provides that the consumer's liability upon lease expiration is based on the realized value of the leased property, a portion of each periodic payment made by the consumer during the extension period shall reduce the consumer's potential end of lease liability, as determined without regard to the potential limitation contained in section 1013(a). The amount of each such periodic payment applied to reduce that liability shall be calculated by subtracting the anticipated residual value of the property from the value of the leased property, both as determined at or before the consummation of the lease, and dividing that result by the number of periodic payments originally contemplated under the lease.

(c) The extension of a long term lease shall not be characterized as a short term lease for any purpose under this title. The extension of a short term lease shall not be characterized as a long term lease for any purpose under this title.

SECTION 1016 - Long Term Lease Advertising

If an advertisement for a long term lease states the amount of any payment or states that any or no initial payment is required, the advertisement must also clearly and conspicuously state the following items, as applicable:

(1) That the transaction advertised is a lease.

(2) The total of initial payments required at or before consummation of the lease or delivery of the property, whichever is later.

(3) That a security deposit is required.

(4) The number, amounts, and timing of periodic payments.

(5) For a lease in which the consumer's liability at the scheduled expiration of the lease is based on the anticipated residual value of the property, a statement that an additional payment may be imposed at the scheduled expiration of the lease.

SECTION 1017 - Short Term Lease Advertising

(a) If an advertisement for a short term lease states the amount of any payment, the advertisement must also clearly and conspicuously state the following items, as applicable:

(1) A statement that the transaction advertised is a lease.

(2) The total amount of periodic payments necessary to acquire ownership and a statement that the consumer has the option to purchase the property and at what time.

(3) That the consumer acquires no ownership rights if the property is not rented for the term required for ownership to transfer and the terms of purchase are not otherwise satisfied.

(b) If an advertisement for a short term lease refers to the right to acquire ownership, the advertisement must clearly and conspicuously state whether or not the consumer may terminate the lease at any time without penalty.

Chapter 3 - Enforcement and Liability

SECTION 1021 - Administrative Enforcement

(a) Compliance with the requirements imposed by this title shall be enforced under:

(1) Section 8 of the Federal Deposit Insurance Act, in the case of

(A) national banks, by the Comptroller of the Currency.

(B) member banks of the Federal Reserve System (other than national banks), by the Board.

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation.

(2) Section 5(d) of the Home Owners' Loan Act of 1933, section 407 of the National Housing Act, and sections 6(i) and 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions.

(3) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal credit union.

(4) the Farm Credit Act of 1971, by the Farm Credit Administration with respect to any federal land bank, federal land bank association, federal intermediate credit bank, or production credit association.

(b) For the purpose of the exercise by any agency referred to in subsection (a) of its powers under any act referred to therein, a violation of a requirement imposed by this title shall be deemed to be a violation of a requirement imposed under that act. In addition to its powers under any provision of law specifically referred to in subsection (a), each agency may exercise any other authority conferred on it by law in enforcing any requirement imposed under this title.

(c) Except to the extent that enforcement of the requirements imposed by this title is specifically committed to some other agency under subsection (a), the Federal Trade Commission shall enforce such requirements. For the purpose of exercising its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed by this title shall be deemed a violation of a requirement imposed under that act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with the requirements imposed by this title, whether or not that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act.

(d) The authority of the Board to issue regulations under this title does not impair the authority of any other agency designated in this section to make rules respecting its own procedures in enforcing compliance with requirements imposed by this title.

SECTION 1022 - Civil Liability

(a) Except as otherwise provided in this title, a lessor who fails to comply with any requirement of this title with respect to a consumer is liable to the consumer in an amount equal to the sum of --

> (1) actual damages sustained by the consumer as a result of the violation;
>
> (2) in the case of an individual action relating to a long term lease, 25 percent of the total of scheduled payments under the lease, but not less than $100 nor greater than $1,000;
>
> (3) in the case of an individual action relating to a short-term lease, 25 percent of the minimum total amount the consumer would pay in order to become the owner of the property, but not less than $100 nor greater than $1,000;
>
> (4) in the case of a class action relating to a consumer lease, the amount the court determines to be appropriate with no minimum recovery as to each member. The total recovery in any class action or series of class actions arising out of the same violation may not be more than the lesser of $500,000 or 1 percent of the net worth of the lessor. In determining the amount of the award in any class action, the court shall consider, among other relevant factors, the amount of actual damages awarded, the frequency and persistence of the violation, the lessor's resources, and the extent to which the lessor's violation was intentional;
>
> (5) the costs of the action and reasonable attorney's fees as determined by the court.

A lessor shall have liability under paragraphs (2), (3) and (4) only for failing to comply with the requirements of subsections (a) and (b) of section 1011, paragraphs (1), (2), (7) and (8) of section 1012, subsections (a) and (e) of section 1013, or paragraphs (1), (2), (3) and (5) of section 1014.

(b) When there are multiple lessors, liability shall be imposed only on the lessor who made the disclosures. When no disclosures have been given, liability shall be imposed on all lessors.

(c) When there are multiple consumers, there shall be only one recovery of damages under subsection (a) for a violation of this title.

(d) Multiple violations in connection with a single consumer lease entitle the consumer to a single recovery under this section.

(e) An action under this section may be brought in any United States district court or in any other court of competent jurisdiction within one year of the date of the occurrence of the violation, except that in the case of a violation under subsection (a) of section 1013 an action may be brought within one year of the scheduled expiration of the lease term. This subsection does not bar a consumer from asserting a violation of this title in an action to collect the lease obligation brought more than one year from the date of the occurrence of the violation as a matter of defense by recoupment or set-off, except as otherwise provided by state law.

(f) A consumer may not take any action to offset any amount for which a lessor is potentially liable under subsection (a) against any amount owed by the consumer, unless the amount of the lessor's liability has been determined by judgment of a court of competent jurisdiction in an action in which the lessor was a party. This subsection does not bar a consumer then in default on the obligation from asserting a violation of this title as an original action, or as a defense or counterclaim to an action brought by the lessor to collect amounts owed by the consumer.

SECTION 1023 - Defenses

(a) A lessor is not liable under sections 1021, 1022, or 1025 for a violation of the requirements of sections 1011, 1012, 1013, and 1014 if within 60 days after discovering the error, and before an action under section 1022 is filed or written notice of the error is received from the consumer, the lessor notifies the consumer of the error and makes whatever adjustments in the account are necessary to assure that the consumer will not be required to pay an amount in excess of the amounts actually disclosed. This provision applies whether the discovery of the error was made through a final written examination report or the lessor's own procedures.

(b) A lessor is not liable under sections 1021, 1022 or 1025 for a violation of this title if the lessor shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error even though the lessor maintained procedures reasonably adapted to avoid such error. Examples of a bona fide error include, but are not limited to, clerical, calculation, computer malfunction and programming, and printing errors. An error of legal judgment with respect to the requirements of this title is not a bona fide error.

(c) A lessor is not liable under this title for any act done or omitted in good faith in conformity with any rule, regulation, interpretation, or approval promulgated by the Board or by an official duly authorized by the Board. This rule applies even if, after the act or omission has occurred, the rule, regulation, interpretation, or approval is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

SECTION 1024 - Liability of Assignees

(a) For purposes of sections 1022 and 1023, the term "lessor" as used in those sections shall include an assignee of the lessor. However, a civil action for a violation of this title may be brought against an assignee only if the violation is apparent on the face of the disclosure statement. A violation apparent on the face of the disclosure statement includes, but is not limited to, a disclosure that can be determined to be incomplete or inaccurate from the face of the disclosure statement or other documents assigned. An assignee has no liability where the assignment is involuntary.

(b) In an action by or against an assignee, the consumer's written acknowledgement of receipt shall be conclusive proof that the disclosures were made, provided the assignee had no knowledge that disclosures had not been made when the assignee acquired the obligation.

SECTION 1025 - Criminal Liability

A fine of $5,000 or a prison term of not more than one year, or both, may be imposed on anyone who willfully and knowingly fails to comply with any requirement imposed under this title.

Chapter 4 - Miscellaneous

SECTION 1031 - Relation to State Laws

(a)(1) This title does not annul, alter, or affect the laws of any State relating to the disclosure of information in connection with consumer leases, except that a lessor shall not have any liability under State law for any failure to comply with any State law relating to the disclosure of specific terms and conditions of consumer leases, other than State-required disclosures relating to terms and conditions imposed by State law.

(2) Upon its own motion or upon the request of any lessor, State, or other interested party in accordance with procedures prescribed in regulations of the Board, the Board shall determine whether any State-required disclosure relates to specific terms and conditions of consumer leases other than terms and conditions specifically imposed on consumer leases by State law.

(3) In the absence of any such determination of the Board with regard to a particular State-required disclosure, a lessor shall not have any liability under State law for failure to comply with its disclosure requirement if the lessor had a reasonable belief that the State-required disclosure related to specific terms and conditions of consumer leases other than terms and conditions specifically imposed on consumer leases by State law.

(4) If such a determination of the Board is amended or rescinded or if such a determination of either the Board or a lessor is determined by judicial authority to be invalid for any reason, a lessor shall not have any liability under State law for any act done or omitted in good faith in conformity with such determination.

(b) This title does not affect the validity or enforceability of any contract or obligation under State or federal law. Except as provided in subsection (a), it does not otherwise annul, alter, or affect the laws of any State relating to any consumer lease except to the extent the consumer lease is not treated as a lease under State law. The laws of any State which treat a consumer lease as a loan, credit sale or secured transaction for any purpose are preempted to the extent of such application.

SECTION 1032 - Effect on Governmental Agencies

No civil or criminal penalty provided by this title for violations may be imposed on the United States or any of its departments or agencies, any State or political subdivision, or any agency of any State or political subdivision.

SECTION 1033 - Reports by Board and Attorney General

Each year the Board and the Attorney General shall report to the Congress concerning the administration of their functions under this title, including any recommendations necessary or appropriate. In addition, the Board's report shall include its assessment of the extent to which compliance with the requirements imposed by this title is being achieved.

SECTION 1034 - Effective Date

(a) This title shall take effect on the October 1 that is at least two years after the date of its enactment.

(b) All regulations, forms, and clauses required to be prescribed shall be promulgated one year prior to such effective date.

(c) Notwithstanding subsections (a) and (b), any lessor may comply with the requirements of this title, in accordance with the regulations, forms and clauses prescribed by the Board, prior to such effective date.

Chapter 5 - Certain Leasing Activities

Section 5136 of the Revised Statutes (12 U.S.C. § 24) is amended by adding at the end thereof the following:

> "Tenth. To invest in tangible personal property, including without limitation, vehicles, manufactured homes, machinery, equipment, or furniture, for lease."

APPENDIX B

SECTION BY SECTION ANALYSIS
OF PROPOSED AMENDMENTS TO THE
CONSUMER LEASING ACT

Introduction

The bill amends the Consumer Leasing Act (CLA), which is currently part of the Truth in Lending Act, Title I of the Consumer Credit Protection Act (CCPA). It consolidates into a new Title X of the CCPA all of the provisions relating to consumer leasing, and expands the existing coverage to include short term renewable leases that involve eventual ownership of the leased property by the consumer. The statute also simplifies and streamlines the current required disclosures, thereby conforming the leasing disclosures to the policies adopted by Congress in the Truth in Lending Simplification and Reform Act passed in 1980 with respect to the disclosure of credit terms.

The bill is divided into five chapters. The first contains general provisions, definitions, exempted transactions, and rulemaking authority. Chapter 2 sets forth disclosure and advertising requirements for long term and short term leases, and provides substantive limitations on the consumer's liability at the expiration of an open-end lease. Chapter 3 provides for administrative enforcement, civil and criminal liability and defenses, and liability of assignees. Chapter 4 contains miscellaneous provisions, including a description of the relationship of the bill to State laws. Chapter 5 clarifies the leasing authority of national banks.

Chapter 1 -- General Provisions

Section 1001 -- Short Title

This provision reflects the removal of the consumer leasing provisions from the Truth in Lending Act (TILA) to a separate title of the CCPA. For ease of reference, the title of the existing act has been retained with the year being used to differentiate this act for technical reasons when necessary.

Section 1002 -- Findings and Declaration of Purpose

This section explains the purposes of the legislation in two subsections. The first relates to leases of personal property for more than four months, and is modeled after Section 102(b) of the TILA. It describes the goals of meaningful, comparable disclosure of such leases, limitation of the consumer's liability at the scheduled termination of the lease, and assurance of accurate advertising.

Subsection (b) relates specifically to leases of four months or less that are renewable with each payment, and that permit the consumer to become the owner of the leased property either by exercise of an explicit purchase option or by making a specified number of payments. The subsection reflects the recognition that these lease agreements increasingly are being used as a method of acquiring ownership of personal property, and expresses the intent to provide meaningful disclosures and accurate advertisements.

Section 1003 -- Definitions and Rules of Construction

This section contains many more definitions than the current CLA, which relies heavily on the definitions section of the TILA. The definitions are modeled after those in the amended TILA and the existing consumer lease provisions. Except as described below, the definitions in this section merely track existing provisions.

The term "consumer" is substituted for the term "lessee" to conform with the terminology under the TILA. The definitions of "security" and "security interest" are deleted because security interest disclosures are not required under the proposed statute.

The term "consumer lease" is defined as a lease or bailment for the use of personal property by a natural person primarily for personal, family or household purposes, where the total contractual obligation does not exceed $25,000. Also included are the purchase or finance of services incidental to the leased property, including insurance, service contracts and other services sold or financed in connection with the lease. Whether the lease is "primarily" for personal, family or household purposes should be determined in the same way that it is determined under the TILA.

A "consumer lease" may be one of two types, referred to as "long term lease" and "short term lease." A long term lease is a lease that has an initial term exceeding four months, whether or not the consumer has the opportunity to become the owner of the property at the expiration of the lease term. A short term lease, not currently covered by the CLA, is one (1) in which the initial term is four months or less, (2) which is renewable at the consumer's election upon the lessor's receipt of additional periodic payments, and (3) in which the consumer may become the owner of the property either upon the exercise of a purchase option or upon receipt by the lessor of a specified number of periodic payments. The term "short term lease" is used in order to avoid any possible suggestion that these arrangements might be incorrectly viewed under State law as purchases rather than as leases.

The nature of the purchase option is immaterial to the determination of whether the lease is a short term lease. Thus, a lease with a "buy out" provision that permits purchase of the goods outright at some point during the lease is a short term lease even if it does not provide for a transfer of ownership upon receipt of a specified number of payments. The definition would not extend, however, to typical daily or even weekly rentals where there is no option to acquire the leased property. Thus, standard short term automobile or tool rental arrangements, for example, would continue not to be covered by the CLA.

The definition of "consumer lease" specifies that a "credit sale" as defined in the TILA is not a consumer lease. Regulation Z defines a credit sale to include

> a bailment or lease (unless terminable without penalty at any time by the consumer) under which the consumer
>
> > (i) Agrees to pay as compensation for use a sum substantially equivalent to, or in excess of, the total value of the property and services involved; and
> >
> > (ii) Will become (or has the option to become), for no additional consideration or for nominal consideration, the owner of the property upon compliance with the agreement. 12 CFR § 226.2(a)(16)(1983).

A transaction is a consumer lease under this definition if the consumer does not initially agree to pay an amount substantially equal to or in excess of the value of the property, even if over the course of the lease transaction that amount is in fact paid due to automatic renewal of the lease.

A definition of "consummation" is added. It provides that consummation takes place when a consumer becomes contractually obligated on a lease. The actual time of consummation is a matter of State law.

The definition of "lessor" is similar to the definition of "creditor" under the TILA. It includes a person that regularly provides the use of property through either short term or long term consumer leases, and to whom the lease obligation is initially payable on the face of the contract. It also includes persons that regularly arrange leases, whether or not the obligation is initially payable to them. In many indirect leases, a dealer may arrange the lease transaction and be the person with whom the consumer deals, but the contract itself is made payable to a bank or other third party. In such cases, both the bank and the dealer (as "arranger") would be lessors.

The definition of "personal property" includes all property that is not real property under the law of the State in which it is located at the time of the lease. For example, a mobile home or houseboat may be considered personal property in one State and real property in another.

Subsection (b) provides that the term "lease" includes both "long term lease" and "short term lease," both as defined in Subsection (a).

Subsection (c) provides that references to the act also include references to the Federal Reserve Board's regulations.

Subsection (d) provides that disclosures of amounts or percentages greater than those required to be disclosed is not a violation of the act. The provision is modeled after Section 103(z) of TILA. Given the strong market incentives against disclosing figures that exceed the actual figures, it was not felt that penalties should be necessary to protect consumers against these erroneous disclosures.

Section 1004 -- Exempted Transactions

The first exemption, leases for business, commercial or agricultural purposes, to a government or governmental agency, or to an organization, is included in the current definition of "consumer lease" in Section 181 of the CLA. The exemptions for leases of safe deposit boxes and leases of personal property incidental to a lease of real property codify current provisions of Regulation M. It is expected that the Federal Reserve Board will provide by regulation for further exemptions if they become necessary or appropriate.

Section 1005 -- Regulations

This section is modeled after Section 105 of the TILA. Subsection (a) requires the Federal Reserve Board to promulgate regulations to effectuate the purposes of the act. Subsection (b) directs the Board to publish, after notice and comment procedures, model forms and clauses for use by lessors in making required disclosures. The subsection provides that a lessor will be in compliance if it properly uses the optional model forms, even if it makes revisions to the forms, so long as they do not materially affect the disclosures.

Subsection (c) provides for a uniform effective date for amendments to Board regulations, and permits a lessor to comply with new regulations prior to their effective date. The subsection follows Section 105(d) of the TILA.

Chapter 2 -- Long Term and Short Term Leases

Section 1011 -- General Requirements of Disclosure

Subsections (a) and (b) cover who should make disclosures, to whom they should be made in the case of more than one consumer, and the timing of disclosures. Subsection (c) provides for a "federal box" similar to the one required under Section 128(b) of the TILA. All required disclosures will be contained in the federal box. In addition, the Board may authorize lessors to include other information and explanations in the federal box. The Board should permit flexibility regarding the provision of related information inside the federal box, while remaining conscious of the goal of avoiding confusion and "information overload." In applying this test, the Board should consider the extent to which partial information contained in this area would require duplicative contract clauses to be repeated in another part of the agreement, and should allow the use of cross-references that will permit the multiple use of federal box information.

Subsection (d) provides for the use of estimates when exact information is not reasonably available to the provider of information. Subsection (e) relates to the effect of subsequent occurrences. Both subsections follow current law under the TILA.

Section 1012 -- Long Term Lease Disclosures

This section lists the disclosures that must be given by the lessor to the consumer in a long term lease. Only those items applicable to the transaction need be disclosed.

The first item is the total amount of all payments to be made at or before consummation or delivery of the property, whichever is later. Any security deposit that must be made at consummation should not be disclosed in this figure, as it is included as a separate disclosure item. Apart from this exclusion, the total figure must include all payments, including periodic payments, required to be made before the later of delivery or consummation.

Item (2) requires the lessor to disclose both the payment schedule for the lease and a total of periodic payments. The disclosure must state the number, amount, and due dates or periods of payments under the lease. The total amount would simply be the product of the number of payments multiplied by the amount of each payment. Thus, if all payments were equal, the disclosure could state, "you will make 30 payments of $150, due on the first day of each month, for a total of periodic payments of $4,500." The date of monthly payments and the month in which payments begin are not required, although lessors may disclose them if desired. Any payments reflected as initial payments in item (1) may not be disclosed as part of item (2). Similarly, amounts paid to third parties by the consumer would not be included in the payment schedule or total of periodic payments.

The third item calls for disclosure of late payment charges. This disclosure is meant to encompass only charges incurred solely as a result of a late periodic payment. It does not include any charges due to deferral, extension, or termination, or to post-default charges. It correlates to the disclosure required by Section 128(a)(10) of the TILA.

The fourth disclosure relates to required insurance. When insurance is required and the consumer purchases the insurance from or through the lessor, the lessor must disclose the premium amount and must indicate whether it is included in the total of initial payments or in the payment schedule disclosure. When the consumer does not buy required insurance from the lessor, the lessor must disclose that the consumer must buy insurance and that the premium is not included in those numerical disclosures. The latter disclosure may be made in the event that the lessor does not know, at the time disclosures are made, whether the consumer will purchase the insurance from the lessor.

The fifth item requires the disclosure of any refundable security deposit that must be given by the consumer.

Item (6) requires a statement that the consumer may be liable for additional amounts in the event that the lease is terminated early. This disclosure must be made when the consumer is liable for the excess of the anticipated residual value over the realized value of the property upon early termination of the lease, as well as when early termination charges may be imposed under the contract. The disclosure does not require any explanation of how early termination liability is calculated or the conditions under which it will be imposed.

The seventh item calls for either a general statement of the consumer's liability for various charges at the scheduled expiration of the lease, or the disclosure of the actual amounts payable at that time. Neither disclosure should include any liability for the difference between the anticipated residual value and the realized value of the property. Thus, the lessor should assume for the purpose of this disclosure that the realized value will equal the estimated residual value of the property. The disclosure includes liability for anticipated dispostion charges, such as the cost of selling the property, the cost of storage, auction, and bid solicitation, and administrative costs of conducting and documenting the sale. Specific dollar figures need not be disclosed, but if they are used, they may be estimates.

Any disposition or termination costs that are collected with one of the scheduled periodic payments would not be disclosed under this subparagraph. They would, however, be disclosed as part of the payment schedule (item (2)). Early termination charges and extension charges must also be excluded from this item.

Item (8) relates only to open-end leases. An open-end lease is one in which the consumer's liability at the end of the lease term is based on the difference between the actual, realized value of the property at that time and the lessor's estimate of that residual value made at the outset of the lease term. For these leases, the lessor must disclose the anticipated residual value of the property at the end of the lease term. The identification of wholesale or retail is unnecessary, as it will be provided for in the contract; in any case, the virtually universal practice is to use wholesale values. Of course, the actual residual value at the end of a lease term is dependent upon a great number of factors, many of which cannot be predicted with any accuracy at the outset of a lease. This may be particularly true in automobile leasing, where the value of a used car at the end of the lease depends greatly upon relatively unpredictable factors such as the economy, the price of gasoline and the precise state of the used car market on the date the car is sold. At the inception of a lease, lessors may use any reasonable method to estimate the anticipated residual value of the leased property.

The item (8) disclosure must also include a statement of the consumer's potential liability at the end of the lease term for the difference between the anticipated residual value and the actual resale value. Under Section 1013, the consumer's liability at the end of the lease term is generally limited to three times the average monthly payment. Thus, the disclosure must also include a statement concerning the limitations on the consumer's liability, and must disclose the product of three times the average periodic payment allocable to a month.

The ninth disclosure applies whenever the consumer's liability is based on the realized value of the property. Although the disclosure must be made for all open-end leases, it may be applicable to some closed-end leases as well. That might occur when an early termination charge is calculated by reference to the realized value of the property. It states that the consumer has the right to an independent appraisal by a third party agreed to between the parties, and that both parties will be bound by the independent appraisal.

The tenth and final disclosure is a contract reference similar to that required by Section 128(a)(12) of the TILA. Since the act's simplified disclosures give less detailed information, the consumer is directed to look to the appropriate contract document. The disclosure must state that the consumer may have other costs and that the consumer should refer to the appropriate lease document for further information. It may refer to specific documents or specific contractual terms.

Section 1013 -- Consumer's Liability Protections

Section 1013 departs from the basic disclosure function of the CLA and imposes substantive restrictions on consumer leases. It is the substantive section giving rise to the rights disclosed in subparts 8 and 9 of Section 1012.

Subsections (a) through (c) relate to long term open-end leases. Their intent is to protect the consumer against unreasonable estimates of anticipated residual value, which could be used by unscrupulous lessors that would "low-ball" depreciation to create enticing, but misleading, low monthly payments. Such deception would seriously undermine the important shopping function of the CLA. This potential problem arises in connection with leases in which the consumer's liability at the end of the lease term is determined by comparing the realized value of the property at that time with the lessor's original estimate of its value at the end of the scheduled lease term.

Section 1013(a) establishes a rebuttable presumption that the anticipated residual value is unreasonable if it exceeds the realized value at the scheduled termination of a long term lease by more than three times the average monthly payment. The lessor may collect the difference in excess of three monthly payments only if it brings a successful court action proving that the estimate was reasonable. A lessor that brings such an action and fails to prove that the estimate was reasonable must pay the costs of the action and the consumer's reasonable attorneys' fees. Under current law, the lessor must pay the consumer's attorneys' fees whether or not it succeeds in rebutting the presumption. The amendment brings CLA into line with parallel provisions in other statutes, such as the TILA, by requiring payment of the consumer's fees only if the lessor is unsuccessful, thereby producing a more equitable apportionment of litigation costs.

The three monthly payment limitation applies only to leases that end at or after the scheduled expiration of the lease. It does not apply to early terminations because of the disproportionate amount of depreciation that occurs in the early years of a lease.

Subsection 1013(b) also provides that the rebuttable presumption of unreasonableness will not apply to the extent that the excess of the anticipated value over the realized value is due to damage to the property beyond reasonable wear and use or to excessive use. Thus, where the property has a low value at the end of the lease due to the consumer's unreasonable use, the consumer's liability at the end of the lease is not limited to the total of three monthly payments.

Subsection (c) permits the consumer to agree, following the scheduled expiration of a long term lease, to pay all or a part of the excess beyond the three payments. This continues current law.

Subsection (d) requires that any penalties or other charges for delinquency, default, or early termination, must be reasonable in light of certain enumerated factors. The factors include the anticipated or actual harm or costs occasioned by the delinquency, default, or early termination, the difficulties of proof of loss, and the lack of, or difficulty of obtaining, an adequate remedy. The provision applies to both open-end and closed-end consumer leases. Penalties or charges are reasonable if they preserve the yield the lessor would have earned had the lease gone to its full term, and permit recovery of all expected or actual loss occasioned by the early termination. The subsection follows Section 183(b) of the current CLA. The penalties or other charges may not appear as part of the segregated disclosures.

Subsection (e) relates to any long term lease in which the consumer's liability is based on the realized value of the property. It continues the consumer's right, currently provided under Section 183(c) of the CLA, to obtain a professional appraisal of the property by an independent third party agreed to by the parties. The consumer must bear the expense of the appraisal, which will be binding on both the parties. This section is applicable both to open-end leases and to certain closed-end leases in which the early termination penalty or any other liability is based on the realized value of the property at the end of the lease.

Section 1014 -- Short Term Lease Disclosures

This section provides the disclosure requirements in connection with short term leases. Item (1) requires disclosure of a simple payment schedule, including only the amounts and timing of payments. A statement such as "you will make weekly payments of $17" is sufficient.

The second disclosure relates to the option to purchase. It must indicate the number of payments and the total of payments necessary to acquire ownership of the property. A disclosure such as "in order to own the property, you must make 25 weekly payments totalling $475" is sufficient. When the contract provides a separate purchase option, this must be disclosed along with a statement of when the option may be exercised.

Item (3) requires the statement that the consumer will not own the property unless the number and the total of payments necessary to acquire ownership are made and the consumer satisfies other terms of the purchase option. This disclosure is intended to emphasize to the consumer that he or she will obtain no equity in the property unless and until the requirements for ownership set out in the contract are met. These requisites may include not only a specified number of payments, but other requirements as well.

The fourth disclosure informs the consumer that other charges, such as late payment, default, pickup charges, and reinstatement fees, are not included in the total of payments required for ownership. It instructs the consumer to see the contract for further information about these charges.

Most short term leases provide that the consumer is responsible for the fair market value of the property if it is lost, stolen, damaged, or destroyed. In short term contracts with this provision, item (5) requires a statement informing the consumer of his or her responsibility. While the disclosure should make reference to the property's "fair market value," no dollar figure need be given or estimated for that value, since it is virtually impossible to determine at the inception of the lease what the fair market value will be at its conclusion.

Section 1015 -- Renegotiations and Extensions

This section deals with disclosure and other requirements for renegotiations and extensions. Under Subsection (a) a renegotiation is considered to be a new lease, and requires new disclosures. As under the present commentary to Regulation M, a renegotiation is defined as occurring when an existing consumer lease is satisfied and replaced by a new lease between the same parties. This concept parallels that of "refinancing" as described in the TILA and Regulation Z. Certain exclusions now contained in the Regulation M commentary are included in the definition of renegotiation. These make clear, for example, that the substitution of one item for another is not a new transaction requiring new disclosures, as long as the lease payment changes by no more than 25%. This might occur, for instance, when an insurance company satisfies an insurance claim by providing the consumer with a substitute automobile. The exclusions stated in the defintion are only illustrative. It is expected that any new exceptions that appear reasonable or appropriate will be reflected by the Board in the revision of the regulation and the commentary.

Subsection (b) provides that no disclosures are required when a lease is extended. An extension is any continuation of an existing consumer lease beyond the originally scheduled termination date that is agreed to between the lessor and the consumer, and that is not accomplished by the satisfaction of the lease and its replacement by a new lease.

The bill provides that a consumer who extends an open-end lease must receive a credit against the potential liability at the expiration of the lease. This provision gives an added protection to the consumer over what was provided in prior law, by ensuring that the consumer will get the benefit of the further depreciation during the extension term.

The amount of the credit applied during each month of the extension period must be at least that amount determined by subtracting the anticipated residual value of the property, as estimated at the time initial disclosures were given, from the value of the property at the time disclosures were made, and dividing that figure by the number of monthly payments originally contemplated under the lease. For example, in a four-year automobile lease in which the intitial value of the automobile was $10,000 and its anticipated value at scheduled expiration, calculated at the beginning of the lease term, was $4,000, the monthly credit against expiration liability during an extension of the lease would be at least $125 ($10,000 - $4,000 ÷ 48). If at the end of a six-month extension period the automobile's realized value were $3,000, the consumer's maximum open-end liability would be $250 ($1,000 - (125 x 6)). In the event that that amount exceeded the sum of three monthly payments, the three-payment limitation would normally apply.

Subsection (c) prevents recharacterization of a short term lease as a long term lease as a result of an extension, and similarly prevents recharacterization of a long term lease as a short term lease. The character of a lease, and the disclosure requirements applicable to it, are to be determined at the outset based on the criteria set forth in Section 1003(a)(5).

Section 1016 -- Long Term Lease Advertising

This section sets out the rules concerning advertising of long term leases. These rules apply to all advertisers, whether or not they fall within the definition of "lessor." However, the requirements relate only to advertisements of consumer leases that are subject to the disclosure requirements.

The bill continues the concept of "triggering terms" that exists in the present CLA as well as the TILA. If any of the triggering terms -- the amount of any payment or a statement that any or no initial payment is required -- is stated, certain other information must also be clearly and conspicuously stated in the advertisement. The amount of any payment is a triggering term whether the payment is a periodic payment, a downpayment, an expiration charge, or any other amount. This will require advertisers, who may be inclined to state only the lowest payment amount, to make other cost disclosures that will place that amount in its proper context. Similarly, any disclosure of a downpayment or other initial payment will trigger the additional disclosures. This would include statements such as "low downpayment!", even if no specific dollar figure is given.

Once any triggering term is used, the advertisement must also state that the transaction is a lease; that a security deposit is required, if that is the case; the total of the initial payments required before consummation or before delivery of the property, whichever is later; the number, amounts, and timing of periodic payments; and, in open-end leases, that an additional payment may be imposed at the scheduled expiration of the lease.

Section 1017 -- Short Term Lease Advertising

This section provides rules similar to those for long term leases for the advertising of short term leases. Subsection (a) provides that an advertisement that states the amount of any payment must also clearly and conspicuously state (1) that the transaction is a lease, (2) the total amount of periodic payments necessary to acquire ownership, along with a statement that the consumer has the option to purchase the property and at what time the option becomes available, and (3) that the consumer obtains no equity in the property if the property is not rented for the term required to acquire ownership, and the terms of the purchase are not otherwise satisfied.

The disclosures are triggered by a statement of the dollar amount of any payment under the lease. Thus, "$19 a week," and "$100 takes it away," would both trigger the additional disclosures. No additional disclosures are required for nonspecific statements such as "low monthly payments." This follows current law relating to long term lease advertising.

Subsection (b) relates to the "triggering term" of the right to acquire ownership of the leased property. When that fact is advertised, the advertisement must state whether or not the consumer may terminate the lease without penalty at any time. Such a statement, however, is not a "triggering term" for purposes of the disclosures required under Subsection (a). Thus, the numerical disclosures triggered by a numerical advertising term under Subsection (a) are not necessary if the only triggering term is the right to acquire ownership.

Chapter 3 -- Enforcement and Liability

Section 1021 -- Administrative Enforcement

This section is based on the current administrative enforcement provision found in Section 108 of the TILA. Two federal agencies named in the current act, the Civil Aeronautics Board and the Department of Agriculture, have been eliminated from the list because it is unlikely that their enforcement authority would ever be exercised.

Section 1022 -- Civil Liability

This section provides a consumer with actual damages, costs and attorneys' fees for all violations of the act. In addition, statutory damages are provided for the violation of identified sections or subsections of the act. As with Section 130(a)(3) of the TILA, this section attempts to distinguish and provide statutory damages for only those provisions most critical to the "shopping" function, and for those that serve as an alert to consumers concerning important elements of the lease transaction.

The courts have not yet experienced the number of cases under the civil liability provisions of the Consumer Leasing

Act that were experienced under the comparable provisions of the TILA, and that led to the revisions enacted in 1980. Nonetheless, as a largely parallel statute there is reason to believe that as consumer leases become more popular the lure of statutory damages for minor, technical violations will bring a correspondingly larger number of nuisance lawsuits before the courts. Thus, it is important to limit lessors' liability for statutory damages to those violations that are considered most critical to consumers.

Statutory damages of $100 to $1,000 would be imposed for violations of the requirements relating to the making and timing of disclosure; the disclosures of Section 1012 relating to initial payments, payment schedule, scheduled expiration liability, and the special open-end lease disclosure; the provisions of Section 1013 relating to the three-payment protection and appraisal rights; and the provisions of Section 1014 relating to the payment schedule, the number and total of payments necessary to acquire ownership, the "no equity" disclosure, and the statement of the consumer's responsibility for the property if lost, stolen, damaged, or destroyed.

The current law's provisions concerning maximum liability for multiple class actions arising out of the same violation are continued in Section 1022(a)(4), with some guidance given the courts concerning factors to be considered in setting class action awards.

Subsections (b), (c), and (d) relate to liability in the case of multiple lessors, multiple consumers, or multiple violations. They generally adopt the substance of parallel provisions of the TILA.

Subsection (e) amends the statute of limitations provision existing under current law. Currently, lawsuits can be brought at any time until one year from the end of the lease term for all violations. A violation in the initial disclosures on a three-year automobile lease subjects the lessor to liability for four years (one year from the end of the lease term) even though the violation may have nothing to do with the end of term liability.

Just as is the case under the TILA, the bill provides a general statute of limitations of one year from the date of the occurrence of the violation. Thus, actions may be brought on initial disclosures at any time until the expiration of one year following the date of the disclosures. Violations of Section 1013, relating to end of term liability, may be brought within one year after the scheduled expiration of the lease. The statute of limitations does not bar a consumer from asserting the violation in a collection action brought by the lessor, even if the action is initiated after the one year statute has run. To the extent that State law permits, the consumer may assert the violation as a matter of defense by recoupment or set-off.

Section 1023 -- Defenses

Subsections (a) and (b) of this section contain defenses to civil suits, administrative enforcement, and criminal liability, patterned on Sections 130(b), (c) and (f) of the TILA. They reflect the 1980 changes to those provisions, such as the 60-day correction period for errors, and the examples of bona fide errors. Subsection (c) is intended to provide lessors with the same protection for acts done in conformity with Board or staff regulations and interpretations that is granted to creditors under Section 130(f) of the TILA, as interpreted by the Supreme Court in Ford Motor Company v. Milhollin, 444 U.S. 555 (1980).

Section 1024 -- Liability of Assignees

Section 1024 deals with the liability of assignees and is based on Section 131 of the TILA. It provides that assignees are liable only for violations apparent on the face of the disclosure statement. However, those who obtain leases as involuntary assignees (for instance, those who obtain the leases due to the lessor's insolvency) do not become liable for any disclosure violations. An involuntary assignee would include a creditor of a lessor in a Chapter 11 bankruptcy, without regard to the creditor's participation in or approval of the plan under which the leases are assigned to it.

Section 1025 -- Criminal Liability

Section 1025 contains the provisions on criminal liability, and follows Section 112 of the TILA. It imposes a fine of $5,000 and/or imprisonment for not more than one year for willful and knowing violation of the act.

Section 1031 -- Relation to State Laws

This provision would amend, on an experimental basis, the preemption standard for determining nonliability for violations of State laws. Subsection (a)(1) provides that a lessor will not be liable under State law for failure to comply with any State law relating to the disclosure of specific terms and conditions of consumer leases, other than State-required disclosures relating specifically to State-imposed terms and conditions. This amendment replaces a standard under which inconsistent State laws are preempted only to the extent of the inconsistency. It will permit lessors to make one set of lease disclosures rather than requiring them also to comply with a variety of State disclosure laws.

Five States that have adopted the Uniform Consumer Credit Code (UCCC)*, and at least two other States,

---

* It should be noted that both versions of the UCCC were developed before the passage of the CLA in 1976. As a result, there was no reference to permitting lessors to follow either State law or the CLA, as was expressly permitted for creditors in loans or credit sales. It seems beyond question that the drafters of the UCCC would have afforded the same treatment to consumer lease disclosures as they did to the more conventional consumer credit disclosures. Thus, the presence of these duties may be viewed more as a result of statutory chronology than as an expression of State policy in favor of duplicative disclosures.

California and Wisconsin, currently appear to have laws regulating the disclosures in connection with some or all consumer leases. The State-imposed disclosure requirements can be quite extensive, including, in the case of California, at least nineteen separate disclosures. A number of the UCCC States' laws are very similar to the current provisions of the CLA, and would therefore continue to impose many of the requirements that the new legislation would eliminate. The result would be a continuation of the confusion and information overload that these amendments seek to end. Indeed, the length and redundancy of lease documents would in some cases be exacerbated by the newly-imposed segregation requirement of Section 1011(c). The difficulty faced by lessors in complying with two sets of disclosure requirements is also not insignificant, particularly to lessors operating in a number of States, and would be substantially relieved by a broader preemption provision than that in present law. The standard does not intend, however, to prohibit lessors from making State-required disclosures that they deem to be desirable or necessary as a matter of contract.

Most States do not currently have disclosure requirements that relate to consumer leases. An experimental override of comparable State provisions will therefore not have the effect of preempting a significant number of State laws. Annual reports to Congress by the Federal Reserve Board will keep Congress informed of developments in the area, permitting a reassessment of the broader preemption provision if it appears warranted.

The bill does not specifically address substantive State consumer protection laws dealing with consumer leases. The effect of the substantive provisions of the act on those laws will be determined in accordance with general principles of federal preemption.

Subsection (a)(2) permits the Board on its own motion or at the request of any lessor, State, or interested party to make a determination as to State-required disclosure provisions. This conforms the CLA provisions with those in Section 111(a)(1) of the TILA. Subsection (a)(3) relieves a lessor of liability for failure to comply with State disclosure requirements in the absence of a Board determination if the lessor acted on its reasonable belief that the State-required disclosure was preempted. A lessor that relies in good faith on a Board determination or on its own reasonable determination of preemption is shielded from liability under Subsection (a)(4) in the event that the determination is rescinded, amended or rendered invalid by a court.

Subsection (b) leaves intact all other State laws affecting consumer leases, with the exception of State statutory or common laws that treat consumer leases as loans, credit sales, or secured transactions. Thus, States cannot recharacterize a transaction that is a consumer lease under this act as a loan or credit sale subject, for example, to State usury limits, or as a secured transaction subject to the Uniform Commercial Code. Substantive regulation of consumer leases would not be affected.

Section 1032 -- Effect on Governmental Agencies

This section, exempting federal, State and local governments and agencies from the criminal and civil liability provisions of the act, is modeled after Section 113(b) of the TILA. The other provisions of Section 113, relating to approval and use of disclosure documents required by federal agencies, are omitted as unnecessary as it does not appear that lease forms are provided or required by these agencies.

Section 1033 -- Reports by Board and Attorney General

This section, requiring annual reports to Congress by the Board and the Attorney General, is taken from Section 114 of the TILA. The Board's report under this section should include an assessment of the effects of the preemption standard stated in Section 1031(a).

Section 1034 -- Effective Date

The delayed effective date provisions are modeled after the effective date provisions of the 1980 simplification of the TILA, and are intended to permit lessors ample time to prepare for the revision of their lease documents required by the amendments. The October 1 date parallels the effective date provisions for regulations in Section 105(c) of the draft, providing a uniform compliance date for all lessors subject to the act.

Chapter 5 -- Certain Leasing Activity

This section clarifies the authority of national banks to engage in various leasing activities. Under current interpretations issued by the Office of the Comptroller of the Currency national banks engage in many types of lease transactions since they are deemed to be comparable to the lending transactions that they often displace. This provision would clarify the status of current leasing activities conducted under a combination of statute and regulations, enable these institutions to engage in all leasing activities (including consumer leasing as defined in Section 1003(a)(5)), and permit the Office of the Comptroller, under authority made express in 1980, to adopt regulations more suited to leasing rather than conventional lending activities.

Senator HAWKINS. Thank you so much. Your complete testimony will be made part of the record, I have some questions regarding it.

CIVIL LIABILITY RESTRICTED TO KEY DISCLOSURES

Mr. Brabant, you recommend in your testimony that the civil liability provisions of S. 1152 be restricted to certain key disclosures along the lines of the Truth-in-Lending Act.

The Federal Reserve Board points out that this simplification effort for consumer leasing will reduce the number of required disclosures significantly and, furthermore, the abusive and nuisance litigation which occurred under Truth-in-Lending has never materialized in the Consumer Leasing Act.

So why should civil liability be restricted to key disclosures?

Mr. BRABANT. I just want to point out we, in no way, are restricting the liability for actual damages on any failure of the lessor to disclose pursuant to any of the act's provisions. It is our opinion that exposure to civil liability statutory damages should be restricted to key disclosures in the Federal act.

Senator HAWKINS. Mr. Monteith, how do you feel about that?

Mr. MONTEITH. Under Truth-in-Lending, statutory damages may be applied only to failures to make key disclosures. We feel the proposed changes to the Consumer Leasing Act similarly limiting the application of statutory damages to those violations that are important to credit shopping and alerting the consumer would be appropriate and consistent with the intent of Truth-in-Lending. The applicability of statutory damages to relatively minor disclosure violations would only be burdensome to the entire process.

Senator HAWKINS. Mr. Brabant, the Consumer Bankers Association submitted for this committee's consideration a legislative proposal for amending the Consumer Leasing Act. Are you familiar with that?

Mr. BRABANT. No, I'm not—not familiar enough to report to you.

Senator HAWKINS. I'll ask you in writing after you become familiar with it.

You recommend covering rather than excluding arrangers of leases. For example, you suggested that since automobile dealers provide the lease forms to the consumer that they should be covered by the act and be held liable for the disclosures.

My understanding of automobile leasing is that it's a fairly competitive business and that automobile dealers may have five or six leasing forms on their desk from as many financial institutions as they can garner to discuss with the consumer. The financial institutions put these forms together and are responsible for providing the required disclosures.

So why should we make the automobile dealer liable unless it's the dealer's own form?

Mr. BRABANT. Well, the dealer would use the bank's form, there's no question about that, but in fact, the dealer is the person who's giving the customer the disclosure and he is the person who's completing the disclosure form.

In our opinion, because he's doing that and because he's meeting with the customer as an arranger of credit, he should also be covered by the act.

Senator HAWKINS. Mr. Monteith, what do you think about Mr. Brabant's suggestion that arrangers of leases be covered?

Mr. MONTEITH. We think the original negotiator of the lease, the dealer, should be covered.

The problem is not, if I may, Madam Chairman, in the written form of the contract. It's in the filling in of the blanks of the contract at the transaction level. Provisions for numerical disclosures within the contract itself are sufficient only if properly completed.

PAYMENT OF ATTORNEY FEES

Senator HAWKINS. It's been argued that one of the reasons that there's been as little litigation under the current Consumer Leasing Act with respect to the lessor's collection of the residual value of leased property in an open-end lease is the requirement that the lessee must pay the lessee's attorney fees.

Under this rationale, it's believable to see a flood of litigation if the rules of payment of attorney fees changes. What do you think, Mr. Monteith?

Mr. MONTEITH. Well, as a layman and certainly not as a legal representative, Madam Chairman, we don't believe that we should pay for a consumer's legal fees when a suit is brought forth and the consumer loses or the lessor wins. We do believe that if the lessor brings suit and the lessor loses that action, that he should be responsible as in other statutes for attorneys' fees.

Senator HAWKINS. Mr. Brabant?

Mr. BRABANT. Our comments would parallel those.

Senator HAWKINS. Well, thank you, gentlemen, and all those who participated today. It's a very complex question and I want to thank all the witnesses for appearing. Your testimony will be helpful for us in framing legislation to give the consumer full disclosure before they enter into any lease-to-buy arrangements. The testimony quite forcefully illustrates the need for some protection.

The record will remain open for 2 weeks. The Senators who were not here today have asked for that privilege. They may inquire for answers in writing to questions. The witnesses' prompt responses will be appreciated. Thank you very much.

(Whereupon, at 11:50 a.m., the hearing was adjourned.)

[Additional material received for the record follows:]

STATEMENT OF THE
WESTERN VEHICLE LEASING ASSOCIATION
ON S. 1152
FOR SUBMISSION TO THE
CONSUMER AFFAIRS SUBCOMMITTEE
COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS
UNITED STATES SENATE

The Western Vehicle Leasing Association ("WVLA") is pleased to have the opportunity to submit this statement for the record on S. 1152, the Consumer Lease and Rental - Purchase Act, as it would relate to vehicle leases. The WVLA is a non-profit regional trade association having a membership of more than 350 leasing companies, financial institutions and dealers providing services to the leasing industry located throughout the western states and in various other areas of the country. The Association's members currently lease in excess of 500,000 vehicles to consumers and businesses nationwide.

We begin by commending Senator Hawkins and the Federal Reserve Board for initiating the public review of the Consumer Leasing Act ("CLA"). The CLA, which became effective just six years ago, has largely served its purpose of protecting consumers who lease automobiles and other goods. Through disclosures and important substantive rights, the CLA has permitted consumers to make informed choices on the leasing of goods and to be spared unfair and predatory practices engaged in by unscrupulous lessors.

While the CLA and the implementing regulations of the Federal Reserve Board have not been the subject of thousands of lawsuits as was the case with the original Truth in Lending Act, the potential for such nuisance litigation is clear and present. If Congress does not remedy some of the flaws contained in the current law, a flood of hypertechnical lawsuits will undoubtedly occur. Moreover, the current law imposes certain compliance burdens on lessors which we believe are neither necessary nor cost effective from the consumer's point of view.

Without qualification we share the views of Senator Hawkins and the Federal Reserve Board that the time has come to simplify and reform the CLA. We also share their philosophies that the current disclosure requirements should be pared and streamlined, that the substantive consumer protections should be retained and that the civil liability scheme is more harsh than is necessary to promote compliance by lessors and to compensate lessees who have had their rights violated.

In her introduction of S. 1152 Senator Hawkins noted that the bill was being offered as a "starting place" for serious consideration of improvements to the CLA. In our opinion, S. 1152 represents an excellent starting place for such consideration. Indeed, speaking on behalf of a trade association, the members of which transact the majority of consumer vehicle leases in the United States, we can assuredly say that our concerns with S. 1152 are relatively few in number, although not insignificant in substance. We wish, then, to express our views on how S. 1152 could be improved as it relates to vehicle leases. For purposes of discussion, rather than any priority of importance, we present our views on subjects in the order of their appearance in the bill.

Section 103(a)(5) - Definition of "Consumer Lease"

In 1976 when the current law was enacted, vehicle lease products were much less diverse and sophisticated than the products which are being marketed now and those which we expect to be marketed in the foreseeable future. In particular, no lease products involved the incidental sale and financing of insurance and extended warranty or mechanical breakdown protection contracts. Understandably, then, the CLA did not specifically anticipate the financing of such services. However, by 1979 consumer demand had emerged for such services and the Federal Reserve Board staff issued an official interpretation providing guidelines on how to disclose them in the context of lease disclosures. While the staff interpretation has been carried over to the new Regulation M, some questions have been raised as to the validity of the interpretation in view of the absence of any explicit statutory basis for it. In order to preclude any controversy under the new law proposed by S. 1152, we ask Congress to include in the definition of "consumer lease" the sale of consumer services which are incidental in time and subject matter to the lease of the vehicle or other goods.

Section 112 - Consumer Lease Disclosures

a. Identity of Lessor and Leased Property.

Although it is not of paramount importance, we believe that consumer lease disclosures should identify both the lessor and the leased property. Needless to say, such information is relevant to the transaction. While in many cases it may not be necessary to disclose this information inasmuch as the lease agreement would address those key matters, that would not be the case if a consumer were otherwise shopping from lessor to lessor for the best deal. In other words, if the consumer were to obtain disclosure statements from different lessors regarding what would probably be different vehicles and lease terms, the consumer would have to note who the lessor was and what vehicle was being offered. In comparison, under Truth in Lending the identity of the creditor is always disclosed to the consumer, as well as a description of the vehicle where a credit sale is proposed. We believe that it would be reasonable and not constitute "information overload" to have comparable disclosures for leases. We further suggest that the lessor have the option to disclose its identity outside of the proposed "Federal box," as also is the case with Truth in Lending.

b. Total Lease Cost.

No one could reasonably disagree with the proposition that it would be desirable to require a lessor to disclose the total cost of the lease to the consumer. Such a disclosure could assist consumers in shopping different leases and in making informed choices as to the true cost of a lease. But we are convinced that the proposed disclosure is so seriously flawed that these goals will inevitably be frustrated.

The central problem is that the same lease could be packaged in a number of different ways resulting in significantly different "total lease costs" even though the actual economic cost of the lease to the consumer would not change. We believe that this problem would commonly arise in connection with the insurance a consumer is required to maintain or with the mechanical breakdown protection contracts a consumer may opt to purchase. The premiums for such insurance or mechanical breakdown protection contracts would typically be paid in one of the following ways: (1) in a lump sum to the lessor at lease signing, (2) financed by the lessor and included in the monthly lease payments, (3) on a monthly basis to a third party (even though it was sold by the dealer) and (4) in a lump sum to the dealer or a third party shortly after lease signing.

Under S. 1152 the premiums would be included in the "total lease cost" in situations (1) and (2) but excluded in situations (3) and (4). To the extent the "total lease cost" would become an important marketing tool, we believe some lessors would restructure their lease product in order to minimize this cost disclosure. For instance, lessors could provide that the insurance or mechanical breakdown protection premiums be paid as described in (3) or (4) above in order to create the illusion that their lease is less expensive than a lessor who collects such premiums as described in (1) and (2) above. What is particularly bothersome about this disclosure is that the consumer would be unable to discern between leases which have hidden costs and those which have all such costs contained in the total lease cost. In any case, the potential for disparity inherent in this disclosure makes it inappropriate from a policy perspective.

In addition, the disclosure could mislead consumers insofar as it would not take into consideration differences in the timing and amount of lease payments and thus could not represent in any accurate manner the consumer's opportunity cost of funds. This shortcoming has been noted by the Federal Reserve Board's Division of Research and Statistics in its February 22, 1983 report to the Consumer Advisory Council on the predecessor draft of S. 1152. We cannot disagree with the findings of the report.

In our judgment the problems with the proposed disclosure cannot be cured. Furthermore, we have attempted to develop alternative approaches but have concluded that it is not possible to fashion any total cost disclosure that will be reasonably free of arbitrary assumptions and inconsistent results. We recommend that the total lease cost disclosure be abandoned. Otherwise, lessors and consumers alike will be faced with a disclosure which will serve more to mislead than to enlighten.

c. Official Fees and Taxes.

Two types of taxes or official fees are involved in a lease transaction: (1) registration fees which will be imposed by a state taxing authority based on vehicle type and its year of manufacture and (2) sales taxes which are simply a flat percentage of the rentals. In absolute dollars the official fees and taxes imposed in connection with a lease will be neither more nor less in amount than the official fees and taxes imposed in connection with a sale. We find it curious, then, that Congress would believe it essential to disclose such amounts where a consumer elects to lease a particular vehicle in contrast to Congress' decision in Truth in Lending that such information not be disclosed in conjunction with loan or credit sale financing if the consumer chooses to purchase the same vehicle.

If the CLA is to be truly simplified, this disclosure should be eliminated.

d. Purchase Option.

It has been our experience that a substantial percentage of the consumers who lease vehicles ultimately either purchase the vehicle or arrange for its sale to a third party. In either event, the existence of a purchase option is of significant importance to the consumer. S. 1152 would change the current law by excising the disclosure of whether or not there is a purchase option and, if so, the time at which it can be exercised and its terms.

The elimination of the disclosure regarding the permissible time of exercise and specific terms of a purchase option makes sense to us because those matters can be exceedingly complex and would often defy a capsulized description anticipated by S. 1152. However, because the very existence of a purchase option is usually key information to a consumer, we believe that Congress should consider retaining this provision of the current law.

Section 115(a) - Renegotiations

This section would provide that renegotiation disclosures are required when a lease is satisfied and replaced by a new lease agreement except in specified circumstances. We are of the view that the lease satisfaction concept, while sound and workable for credit transactions, is inappropriate for consumer leases. Our conclusion reflects principally the absence of any objective legal guidelines as to what constitutes satisfaction of a lease aside from a full payoff. Secondarily, the concept as we perceive it is essentially grounded on accounting rules which are in a state of rapid redefinition as witnessed by the numerous interpretations which have followed the issuance of the Financial Accounting Standards Board's Statement No. 13, a ruling of key relevance to lease transactions.

In our view renegotiation disclosures should be mandated in only four situations: (1) where there is an abbreviation of the lease term, (2) where there is a change in the residual value in an open end lease, (3) where there is a substitution of a lease asset in a single item lease having a substantially different economic value than the original, and (4) where, as S. 1152 contemplates, there is a change in a multi-item lease resulting in a revision of the periodic payment by more than twenty-five percent. In each of these four situations, the change has a profound economic impact on the lease and the requirement to treat the transaction as a "new lease" is fitting.

However, we do not believe that any list of exclusions or inclusions will enjoy a long tenure because of the continuing evolution of lease products and practices. Accordingly, we do not recommend that any list of situations, whether inclusionary or exclusionary, be codified. We recommend instead that the Federal Reserve Board be given the general authority to determine by regulation what constitutes a renegotiation and to require whatever disclosures the Board considers appropriate on the basis of its rulemaking proceedings.

Section 115(b) - Extensions.

By way of introduction, Section 113(a) would continue the current law by requiring a lessor who offers an open-end lease to provide a reasonable estimate of the vehicle's value as of the date the lease is scheduled to expire. Upon expiration, the consumer would have the benefit of the "Three Payment Rule" which means he or she would not be liable for more than three monthly payments, except for excessive wear and use or physical damage, unless the lessor goes to court and successfully rebuts the presumption that the original estimate was unreasonable (or unless the consumer independently agrees to pay the excess).

The Three Payment Rule imposes on the lessor the practical requirement to make sure that its unrecovered investment in the vehicle roughly equals the anticipated market value at the time of scheduled expiration. We have no quarrel with the

Three Payment Rule under either the current law or Section 113(a) because it deters unscrupulous lessors from overstating the expiration value of the vehicle (in order to permit an unreasonably low monthly payment), a documented consumer abuse of the early 1970's.

Section 115(b), on the other hand, would prolong the application of the Three Payment Rule concepts to each month of a lease term extension, no matter how long the lease is extended. This would constitute a drastic change in the law. We strongly oppose such a change for the reasons stated below.

First, there has been no showing either that consumers are unaware of the temporal limitations of the Three Payment Rule (which we believe are adequately disclosed under present law) or that the current inapplicability of the Rule during an extension period is unfair to the consumer. We should add that during the 1970's 13 states enacted consumer leasing legislation providing for the functional equivalent of the Three Payment Rule. In each of those states the limitation of liability applies only to scheduled expiration, not at any time before or after. None of those states have enacted further legislation, or to the best of our knowledge, have even considered legislation, to expand lease expiration protections either to early termination or extended lease term situations.

Second, the application of the Three Payment Rule to extension periods in the manner suggested by the bill is fundamentally unsound and illogical. Simply stated, the problem is of the apples and oranges variety. Again, the Three Payment Rule compels lessors to structure their lease investment amortization curve to intersect the projected vehicle depreciation curve at but one point in time - at lease expiration. After that time each curve will naturally decline but at varying rates and at varying times. What is critical is that a lessor's rate of amortization cannot be equated to the market rate of depreciation for its assest, the leased vehicle. Section 115(b) would nonetheless require the lessor to use its rate of amortization as if it were the market rate of depreciation. This means that only by happenstance will the consumer's liability at the end of the termination period approximate the then market value of the vehicle.

Third, §115(b) could not produce uniform results in terms of the liability of consumers at the end of extension periods in part because there are a multiplicity of amortization methods used within the vehicle leasing community and in part because of other unrelated factors. For instance, some lessors use a straight line method of depreciation, while others use one or more types of the actuarial earnings method. And whatever amortization method is employed may be further affected by the occurrence of a capitalized cost reduction, the original term of the lease and other factors. In a nutshell, the amount of depreciation credited to a consumer's liability upon termination after an extension will vary significantly from lessor to lessor depending on the amortization method and from lease to lease offered by a particular lessor depending on factors which are wholly unrelated to the lessee's decision or reason to extend the lease.

Lastly, there would appear to be an ongoing duty to have a good faith vehicle value estimate as to each month of the extension period under §113(a). Because there is no logical relationship between the lessor's amortization rate (and the corresponding monthly credit to the consumer's termination liability) to actual market depreciation, we fear that §115(b) would invite costly and frequent litigation as to whether the lessor has satisfied the good faith estimate requirement once the date of scheduled expiration has passed.

For the reasons stated above, we urge the Subcommittee not to adopt that portion of §115(b) which would continue the applicability of the "Three Payment Rule" during extensions. However, if the Subcommittee concludes that there is confusion among consumers as to their termination liability rights during lease term extensions, we believe that the best answer is a new disclosure. Specifically, we would propose a disclosure which would be given to the consumer either in the lease, or as a portion of the provision dealing with the lessee's extension rights shortly before scheduled expiration. The disclosure would emphasize to the consumer that the Three Payment Rule applies only at scheduled expiration and does not continue during an extended term. While we do not believe that any change to the present law is warranted, we believe that such a disclosure would be an efficacious answer to the problem as perceived.

Section 122 - Civil Liability

When the Truth in Lending Simplification and Reform Act was enacted in 1980, it was manifest that Congress had concluded that the original Truth in Lending Act had nurtured an avalanche of expensive lawsuits concerning hypertechnical matters and disclosure requirements of secondary importance to the consumer. In order to reduce the incidence of this litigation, Congress not only simplified the overall number and complexity of disclosure requirements, but also limited the creditor's liability for civil penalties to violations of key disclosure requirements.

For instance, in the case of a loan or credit sale, Congress amended Section 130 of the Truth in Lending Act to provide that a creditor would not be subject to civil penalties (vis a vis actual damages) for disclosure violations relating to the identity of the creditor, late charges and the statement in the disclosure referring to the credit documents for additional information. S. 1152 would not adopt comparable reforms. Instead, it would provide for civil penalties for the violation of any of the required disclosures. Thus, a lessor would have civil penalty exposure for failing to disclose properly a late charge or lease contract reference.

It would be difficult to explain to an automobile dealer and a consumer why there should be civil liability for the dealer's failure to disclose properly its late charge provision or the contract reference statement if the vehicle were leased in contrast to there being no such liability if the vehicle were purchased on credit. There is, of course, no apparent policy justifying this distinction. Accordingly, we urge Congress to provide civil penalty rules for leases which parallel Truth in Lending.

We mentioned above the fact that under Truth in Lending a failure to disclose the creditor's identity would not be subject to civil penalty. S. 1152 would not provide for the disclosure of the lessor's identity but, as also discussed above, we believe it should. If Congress chooses to require this disclosure, we further ask that it too parallel Truth in Lending and be excluded from the civil penalty scheme.

Section 131 - Relation to State Laws

Section 131 (c) would restate current law by providing that this enactment would not affect the validity or enforceability of any contract or obligation under state or other federal law. We cannot argue with that general concept except to the extent that it would ignore a very fundamental and growing problem being encountered by vehicle lessors, specifically that a transaction which clearly falls within the definition of a "consumer lease" for purposes of the CLA or S. 1152 may not be treated as a lease under state law. This is a problem of significant magnitude to vehicle lessors and, we believe, to lessors of other consumer goods. We believe that Congress has the opportunity to use and should use S. 1152 as a catalyst for the correction of this problem. Some elaboration is in order.

Leasing has become an increasingly popular alternative to purchasing as a means for a consumer to acquire the possession and use of a vehicle. Growing consumer demand for vehicle leases has resulted in highly differentiated product types and market place competition continues to fuel innovation. Against that backdrop, the vehicle leasing industry has experienced the same phenomenon experienced by providers of certain other consumer financial services that product development has simply outpaced existing legal structures.

The most troubling manifestation of this phenomenon for vehicle lessors has been that the courts are recharacterizing transactions which meet the definition of a "consumer lease" under the CLA (or would so under S. 1152) as a loan or credit sale or secured transaction for state law purposes. For instance, in the recent decision in Rouse v. Peoples Leasing Co., 96 Wash.2d 722 (1982), the Washington Supreme Court held that a lease which satisfied the definitional requirements of a consumer lease under the CLA was the functional equivalent of a loan on security and therefore should be regulated as a loan for usury purposes. In Thomas v. Wright, 21 Cal.App.3d 921 (1972), a California appellate court reviewed a vehicle lease which would have fallen within the CLA's consumer lease definition and concluded that it was a credit sale in order to apply its retail instalment sale law. And in Huff v. Nevada National Bank, 94 Nev. 140

(1978), the Nevada Supreme Court examined a lease which also was within the parameters of a "consumer lease" and indicated that it considered it to be a secured trans action, and not a lease, for purposes of Article 9 of the Uniform Commercial Code.

From the lessor's point of view, when a court renders a decision to the effect that a particular type of vehicle lease should be treated as a loan, credit sale or secured transaction, a parade of legal horribles follows. For instance, if the transaction is deemed to be a loan, the court will proceed to determine, albeit arbitrarily, the "interest rate" implicit in the transaction to ascertain whether the local usury standards have been violated. If those standards have been violated, the lessor would typically suffer a punitive loss which could include all of the profit on the transaction and even the lessor's investment in the vehicle. If the transaction were considered to be one for security, rather than a lease, under the Uniform Commercial Code, the lessor could lose its entire investment in the leased vehicle because there would be no perfected security interest in the vehicle. See In re Tillery, 571 F.2d 1361 (5th Cir. 1978).

Recharacterization is probably the greatest single legal problem facing the vehicle leasing industry. In each of the cited instances, recharacterization was a handy judicial solution for addressing a problem in a legal framework otherwise devoid of any specific statutory scheme covering leases. While recharacterization may provide an equitable result in a given matter before a court, the precedent can be cataclysmic for the leasing community in that state because it may mean that all existing portfolios of similar transaction types are subject to indefensible strike suits. Clearly, the far superior way to address abuses in consumer leasing is for the states to regulate the transactions squarely.

What we seek is an amendment to the CLA which would do nothing more than place the burden on the states to regulate as leases those transactions defined as consumer leases under the CLA. In that regard, the states should specifically be prohibited from recharacterizing transactions which meet the definitional requirements of a "consumer lease" under the CLA as loans, credit sales or general transactions under state law. At the same time, however, the states should not be precluded from regulating such transactions as they see fit. In sum, what we seek is a federal mandate to the states to modernize their laws to acknowledge the advent of consumer leasing.

We have greatly appreciated the opportunity to submit this statement for the record. S. 1152 and the dialogue precipitated by the hearings of this Subcommittee are timely and well directed. On the basis of the efforts exhibited by Senator Hawkins, the Federal Reserve Board and, of course, the Subcommittee, we are optimistic that the CLA will truly be simplified and reformed.

American Financial Services Association

1101 Fourteenth St. N.W.
Washington D.C.
20005

Robert B. Evans
President

(202) 289-0400

July 29, 1983

The Honorable Paula Hawkins
Chairman
Subcommittee on Consumer Affairs
Committee on Banking, Housing and Urban Affairs
United States Senate
Washington, D.C. 20510

Dear Madam Chairman:

The American Financial Services Association (AFSA)* appreciates this opportunity to comment on S. 1152, the Consumer Lease and Rental Purchase Agreement Act. AFSA member companies, which include the financing affiliates of automobile manufacturing companies, have a major stake in the consumer leasing market. AFSA members engage almost exclusively in long-term leases subject to the Consumer Leasing Act. We welcome this legislation as part of the ongoing reform of the Consumer Protection Act. This bill is essentially that drafted by the Federal Reserve Board staff. The staff is to be commended for its efforts to simplify the present somewhat complicated provisions of the Consumer Leasing Act.

AFSA supports the consumer leasing disclosure simplifications embodied in S. 1152. This bill brings the Consumer Leasing Act into compliance with the already simplified Truth-in-Lending Act. We believe the revised model disclosure forms as proposed by the Federal Reserve Board, are much easier to understand for both the consumer and the creditor.

AFSA's comments on S. 1152 focus on four areas which we believe should be changed in order to further improve the Consumer Leasing Act.

First, AFSA questions the need for the disclosure of a "total lease cost." This total reflects items that are subject to fluctuation over the term of the lease. AFSA notes that the

---

*Organized in 1916, AFSA is the national trade association of companies engaged in the consumer credit business. AFSA represents over 550 companies with over 15,000 offices ranging from single, small loan offices to nationwide diversified nonbank financial services organizations engaged in unsecured direct lending, second mortgage lending and sales finance. AFSA members include the sales finance and leasing subsidiaries of major domestic and imported automobile manufacturers.

The Honorable Paula Hawkins
July 29, 1983
Page Two

Federal Reserve Board's Division of Research and Statistics urged that this disclosure be eliminated as it fails to represent the true cost of the lease. In automobile leasing, periodic payments may contain insurance premiums, use taxes and other official fees, all of which may fluctuate over the term of the lease. These variables render the total lease cost disclosure more of an estimate and if it is not eliminated, it should be labeled as an estimate.

Second, while AFSA applauds the limitations on civil liability which bring the presently onerous liability provisions more in line with the 1980 TILA amendments, AFSA believes that criminal liability provisions have no place in the Consumer Leasing Act and urges the elimination of Section 125.

Third, S. 1152 provides a narrow preemption of inconsistent state laws. Because AFSA member companies are generally licensed by the states, or operating pursuant to state law, AFSA supports the limited preemption in the bill. In addition, AFSA supports proposals which would preclude a state from recharacterizing transactions under the Consumer Lease Act as credit sales. This addresses state court decisions that have attempted to regulate consumer leases by recharacterizing them as credit sales subject to state retail installment sales acts. This form of federal preemption is similar to that embodied in the provisions of the Cash Discount Act which prohibits states from characterizing cash discounts as a finance charge. We urge that a similar prohibition be included in S. 1152.

Fourth, although AFSA is most directly concerned with the consumer leasing disclosure simplification provisions of the bill, we wish to comment on the extension of the Consumer Leasing Act to the "rental-purchase" industry. These agreements - typically for television and appliance rentals - are a very different form of transaction from the type of leasing in which AFSA members engage. S. 1152 segregates these agreements in a separate category of contract disclosures. We believe that the provisions governing "rental-purchase agreements" should be treated in a separate title of the Consumer Protection Act. Such a separation would reinforce the unique nature of such transactions, particularly as some states have enacted legislation restricting such agreements.

AFSA appreciates the opportunity to comment on this vital issue and commends Chairman Hawkins for her introduction and hearings on the Consumer Leasing Act.

Very truly yours,

Robert B. Evans
President

american rental association
1900 - 19th Street, Moline, Illinois 61265 Telephone 309/764-2475

C. A. Siegfried, Jr.
Executive Director

August 11, 1983

HAND DELIVERED

The Honorable Paula Hawkins
Chairman, Subcommittee on Consumer Affairs
Committee on Banking, Housing & Urban Affairs
United States Senate
Washington, D.C. 20510

Re: Consumer Lease & Rental-Purchase Act of 1983; S.1152

Dear Senator Hawkins:

Thank you for your letter of July 20, 1982. I appreciated the courtesies extended by you, Senators Gorton and Dodd to myself and the other witnesses testifying at the hearing on July 19, 1983.

The American Rental Association (ARA) is pleased to respond to the two questions you have raised as follows:

Question No. 1

Members of our rental industry use rental agreements (indefinite term) as distinguished from lease agreements (fixed term). There are almost as many different rental contract forms as there are members in our rental industry. We enclose copies of eight different rental contract forms, but emphasize that they are not representative of the nature or character of the innumerable rental contract forms in use today.

Explanation:

Standardization of rental agreement forms does not exist within the ARA membership. Each independent small business firm in the rental industry adopts its own form of rental contract, determined largely by the principal line or lines of property items rented and the owners preferences.

A clear example is the rental of an automobile at an airport in another city. Usually the customer does not know precisely how long he (or she) will need the car, but does know that he may return it to the airport whenever he decides and pay only for the time he has actually kept it. The rental charges will be calculated upon return, after the rental. In contrast, consider the leasing of an automobile in one's home city. Usually, this need is not for a very short and indefinite use; but rather for a longer, more measurable or determinable period, such as to replace, either temporarily or permanently, the person's principal automobile.

A rental maximizes instant availability, convenience, flexability, and economy where need for the item is occasional and of short and indeterminate duration. A lease (fixed term) cannot match these advantages; but it has its own advantages in its own place, i.e. where the nature of the customer's needs justify making a longer and a definite commitment for the use of an item. It follows logically, that a rental, necessarily, must have a higher customer cost per day of possession than a short-term lease. Likewise, a short-term lease must have a higher cost per day of possession than a long-term lease; and a long-term lease is more expensive, in terms of cost per day of possession, than an outright purchase. Such are the inherent differences between the nature of a rental, and that of a lease (whether short or long term) in the spectrum of business transactions.

The transactions which S.1152 addresses are commonly called, "rent-to-own". In fact, they are short-term, renewable leases that may lead to ownership of the leased property by the consumer. Each lease is for a definite, fixed term of a week or a month. Automatic, successive renewals are contemplated at the inception of the first lease; and renewals are triggered automatically by each successive weekly or monthly payment. Transfer of ownership occurs if and when the required number of successive, separate leases (successive, separate payments) have been completed (paid).

The distinction separating "rental" from "lease" has evolved in the market place and is now very real indeed. The serial lease-purchase transactions of S.1152 are leases and an erroneous label of "rentals", will create confusion throughout the industry and with the consumer public. ARA has respectfully suggested amending S.1152 so as to delete the reference to "rental purchase" and substitute therefor, the term lease purchase (or more accurately, "multiple lease-purchase"*) throughout the bill.

Question No. 2

Not applicable. Members of our industry do not lease appliances with option to buy; nor do they rent appliances with option to buy.

Additional Comment

Additionally, for the hearing record, we submit the following comments for the purpose of clarification.

Testifying for the Association of Progressive Rental Organizations, (APRO) Mr. Samuel Choate, Counsel, advised the Subcommittee, in responding to question from Senator Gorton, that APRO had no objection to the change of terminology to lease-purchase as recommended by ARA (T.54); and added that as a lawyer he preferred the term, "lease" (T.55).

The comment of Mr. Robert S. McGregor, President of the Furniture Rental Association of America (FRAA) indicates that he did not thoroughly understand Senator Gorton's question, and seemed to infer that the suggested change in the bill might necessitate removal of the word, "rent" from his own business "operations", "name", "signs", "trucks","literature" and "image".

---

*The term, "multiple lease-purchase", although longer, would avoid confusion with a single lease-purchase transaction which contains an option to purchase for an authentic option price, as contrasted from automatic transfer of ownership for merely ostensible, nominal or no consideration.

Of course, this could not happen, since the suggestion is merely that the term lease-purchase be used in the bill for statutory purposes. FRAA's prepared Statement, in many instances, refers to the transactions covered in S.1152 as "leases" and we would doubt that it would seriously object to making the correction to the term, lease-purchase in the bill.

Support for changing the label for the subject transaction to lease-purchase throughout S.1152 can be found in the prepared Statement and testimony of Nancy H. Teeters, Member of the Board of Governors of the Federal Reserve System, which adopt the worthy principles of simplification and plain English. Enhancing the accuracy and meaningfulness in the description of the subject transaction would be entirely consistent with these principles.

Further, since the bill would amend the Consumer Leasing Act, consistency can be achieved by use of lease-purchase to describe short-term, renewal leases leading to transfer of ownership. Conversely, the sudden introduction of the term "rental-purchase" for the first time, to describe certain shorter-term leases (4 months or less), would create confusion and be inconsistent with, and foreign to, the language of the existing Consumer Leasing Act and the language in those other portions of S.1152 which relate to "leases" of more than 4 months.

For all of these reasons, we strongly recommend the use of the term, lease-purchase in the title and throughout S.1152.

We thank you Senator Hawkins for this opportunity to further participate briefly in the important work of your Subcommittee. We will be pleased to participate further and work with your staff, should you desire.

Please include this letter in the hearing record.

Respectfully yours,

Milton L. Neumann

Milton L. Neumann, President

MLN:rs

encls.

FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

BUREAU OF
CONSUMER PROTECTION

August 19, 1983

The Honorable Jake Garn
Chairman, Committee on Banking,
Housing and Urban Affairs
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

Chairman Miller has asked me to respond to your request for comment on S. 1152, the "Consumer Lease and Rental-Purchase Agreement Act." We wish to offer both general observations about the goal of simplifying the Consumer Leasing Act and more specific remarks concerning certain provisions of the proposed legislation. This letter addresses each in turn.

(1) Consumer Leasing Simplification. We support the general goal of simplifying disclosures required by the Act. We believe that the Act's purpose of assuring meaningful disclosure of credit terms to consumers can be served with fewer disclosures than are currently required by the Act and its implementing Regulation M. Specifically, we support the proposed legislation's focus on those disclosures, such as the total lease cost and the amount due at the inception and termination of the lease, that are the most pertinent to the consumer's shopping decisions. We also agree that the number of required disclosures for consumer leases can be reduced from 21 to 13 for open-end leases, and to 12 for closed-end leases without sacrificing consumer information. The disclosures that would not be retained relate to features or transactions that are relatively uncommon in current leasing practice or that are customarily spelled out in the lease itself, or to information that will be provided for reasons unrelated to the Act.

At the present time, however, there does not appear to be empirical data to support the choice of the disclosures that the legislation would require for consumer leases and rental-purchase agreements. We also note in part on the basis of our 1982 survey of Truth in Lending Compliance Costs for Mortgage Lenders, that legislative and regulatory action taken to simplify and reduce the burden of compliance may involve transition costs to industry members in the form of legal fees, employee training and revised forms.

The Commission staff also supports the proposal to simplify the advertising requirements for consumer leases. Proposed Section 116 reduces the number of terms that "trigger" additional disclosures from three to two and also streamlines the required disclosures. Although there does not appear to be empirical evidence indicating a need for the particular advertising disclosures that proposed Section 116 would require, it appears that disclosures in advertising provide useful information to consumers in comparing consumer leasing plans. Reduction in the number of required disclosures will facilitate industry's compliance while enabling consumers to concentrate on the most important disclosures.

(2) Rental Purchase Agreements. The bill would add "rental-purchase agreements" to the coverage of the Act. As defined in Section 103(a)(9), these are rental agreements having an initial period of four months or less that are automatically renewable with each payment. The lessor agrees to transfer ownership of the rental property to the consumer for no or nominal consideration after a specified number of payments are made. These transactions include the typical month-to-month or week-to-week rentals that impose no obligation beyond the initial four-month period.

Although the Commission staff does not have specific data on the frequency of rental-purchase agreements in the marketplace, or of abuses by lessors in rental-purchase arrangements, we understand that these transactions are becoming increasingly more common in the leasing industry and are increasingly subject to state and local laws. Requiring similar disclosures for rental-purchase agreements can facilitate comparison of these transactions with leases and credit sales. At the same time, if the legislation provides for greater preemption of state and local laws in this area and leads to greater uniformity in disclosures, the resulting lower costs to lessors would benefit both industry and consumers to whom these savings would be passed.

The proposed legislation does not presently include agreements in which the consumer has the option of purchasing the leased good for other than a nominal price. If exclusion of such agreements results in widespread evasion of the proposed legislation's requirements concerning rental-purchase agreements, the Committee may wish to consider taking steps to address this problem.

To the extent that rental-purchase agreements are covered by the federal Act, we also support enactment of standards for advertising rental-purchase agreements similar to the standards for advertising consumer leases.

(3) Federal Preemption. Under proposed Section 131, a state law would be preempted by the Act if the state and federal law are "inconsistent." This standard would require that a person be unable to comply with state law without violating a provision of the federal law. The Consumer Leasing Act currently preempts state laws that are inconsistent with the Act's provisions unless the state law provides "greater protection and benefit" to the consumer.

The Commission staff has evaluated what types of state law provisions would be preempted under the bill and what types would not. For example, unlike preemption under the amended Truth in Lending Act in which state law requirements that certain terminology be used to describe the same elements of the transaction give way to federally-mandated terminology, the amended Consumer Leasing Act would have no such preemptive effect. This is because neither the current Act nor the bill prescribe the terminology to be used in making the required disclosures. In addition, the amended Consumer Leasing Act would not preempt provisions such as the two-monthly-payment cap on consumers' end-of-term liability that is found in states following the Uniform Consumer Credit Code. The two-payment limit in these laws does not prevent compliance with the federal provision limiting liability to an amount three times the average monthly payment. Similarly, there would be no preemption of some states' treatment of rental-purchase agreements as credit sales.[1] In these cases, preemption would not occur merely because state law defines the transaction differently than federal law so that it would be possible to comply with both state and federal laws. (See FRB Section-by-Section Analysis, March 1983, at 22.)

---

[1] For example, in 1982 Pennsylvania expanded that state's definition of a credit sale to include short-term leases that provide ownership options. Prior to 1982, the state law definition of a credit sale generally paralleled the language in other states' laws and in federal law, providing that an arrangement would not constitute a credit sale unless a consumer contracted to pay the full value of the leased item.

Because few, if any, state laws requiring disclosures for consumer leases or rental-purchase agreements will be preempted, lessors will have to provide two sets of disclosures in most instances. These disclosures could be so similar, in view of the fact that no terminology is prescribed by federal law, that consumers could easily be confused. Thus, whatever expense is involved in providing the two sets of disclosures is not clearly justified. Because the Commission staff believes that federal law should preempt more of the state laws on consumer leasing and rental-purchase transactions than the bill would provide, we cannot support the standard for federal preemption that is articulated in the proposed legislation.

The Commission staff, however, believes that preemption under the Consumer Leasing Act need not be absolute. Because most of the potential for consumer confusion and for duplicative compliance involves the disclosure requirements for consumer leases and rental-purchase agreements, we suggest that if the content or subject matter of the state-required disclosures is covered by the requirements of the federal legislation, the state disclosures should be preempted. Under this standard, the Federal Reserve Board should still be responsible for determining whether state-required disclosures cover the same content or subject matter as the federal requirements, and, thus, are preempted.

(4) Consumer's Liability at Early Termination or at the End of the Lease Term. Both the bill and the current law limit the consumer's liability at the end of an open-end lease to the extent that the estimated residual value exceeds the actual residual value by more than three times the amount of the average monthly payment. In order to collect any amount in excess of this figure, the lessor must prove that the estimate of residual value made at the beginning of the lease term was reasonable. Unlike current law, which requires the lessor to pay the consumer's reasonable attorney's fees regardless of which party prevails, the proposed legislation would require the lessor to pay such fees only if he or she was unsuccessful in rebutting the presumption that such "excess liability" is unreasonable. The Commission supports this change because it more equitably apportions litigation costs between the lessor and the lessee.

(5) Civil Liability/Liability of Assignees. Proposed Section 122 reflects many of the changes to the civil liability provisions made in the Truth in Lending Simplification and Reform Act of 1980. These include the limitations of damage awards in class actions and the provisions dealing with multiple lessors and multiple consumers. In addition, the draft changes the statute of limitations to one year from the occurrence of the violation for all actions.

We support the proposed changes in the civil liability provisions because the proposal reconciles potential civil liability under the Consumer Leasing Act with the amended Truth in Lending Act, without sacrificing the consumer-lessee's private enforcement of the Act. However, unlike the Truth in Lending Act there have been no class actions and almost no litigation under the current Act since it went into effect in March 1977. We know of only one reported private action against a lessor for violations of the Act,[2] although, for example, the Board estimates that 700,000 automobiles have been covered by leases subject to the Act. For these reasons, the need for limiting the Act's civil liability provisions is not so apparent as it was with the Truth in Lending Act. At the same time, to the extent that the risk of substantial liability has resulted in overdeterrence, improvement in the liability standards may correct that problem.

The bill also limits the liability of lessors' assignees under Sections 122 and 123 to violations that are "apparent on the face of the disclosure statement."[3] This change is consistent with the amended Truth in Lending Act.

This proposal would appear to protect the consumer's interest without overly burdening assignees. Essentially, we see no justification to hold these parties liable as lessors where the statute otherwise holds assignees liable for facial violations. In addition, the bill will clarify who is a "lessor" for the Act's purposes and therefore, it will eliminate potential overcompliance. For these reasons, we support the proposed liability standard for assignees.

---

[2] Thomas v. A.Z. Chevrolet, Inc., 619 F.2d. 246 (3rd Cir. 1980).

[3] Section 124(a) defines "violations apparent on the face of the disclosure statement" as including "a disclosure that can be determined to be incomplete or inaccurate from the face of the disclosure statement or other documents assigned." It also precludes liability where the assignment is involuntary.

We appreciate this opportunity to comment on the Consumer Lease and Rental-Purchase Agreement Act. These views represent the views of the staff of the Bureau of Consumer Protection and do not necessarily reflect the views of the Commission or of any individual Commissioner. If the Committee has questions about these comments, please contact me at 724-1119.

Respectfully submitted,

Anne Price Fortney

Anne Price Fortney
Associate Director for
Credit Practices